

No. 22-13051-HH

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

IN RE: BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION MDL 2406.

On Appeal from the United States District Court
for the Northern District of Alabama, Southern Division,
No. 2:13-cv-20000-RDP

**AMICUS CURIAE BRIEF OF THE STATE OF OKLAHOMA INSURANCE
DEPARTMENT, THE ARKANSAS INSURANCE DEPARTMENT, THE
CALIFORNIA DEPARTMENT OF INSURANCE, THE GEORGIA OFFICE
OF INSURANCE AND SAFETY FIRE COMMISSIONER, THE IDAHO
DEPARTMENT OF INSURANCE, THE MAINE BUREAU OF
INSURANCE, THE NEVADA DIVISION OF INSURANCE, THE
VERMONT DEPARTMENT OF FINANCIAL REGULATION, THE
WASHINGTON OFFICE OF THE INSURANCE COMMISSIONER, AND
THE WISCONSIN OFFICE OF THE COMMISSIONER OF INSURANCE
IN SUPPORT OF REVERSAL**

Counsel for *Amici Curiae*

KIM HUNTER

General Counsel

Oklahoma Insurance Department

400 N.E. 50th Street

Oklahoma City, OK 73105

(405) 521-2746

kim.hunter@oid.ok.gov

Of Counsel:

TERESA L. GREEN
Senior Counsel
Oklahoma Insurance Department
400 N.E. 50th Street
Oklahoma City, OK 73105
(405) 521-2746
teresa.green@oid.ok.gov

BOOTH RAND
General Counsel
Arkansas Insurance Department
One Commerce Way
Little Rock, AR 72202
(501) 371-2820
booth.rand@arkansas.gov

ROB BONTA (SBN 202668)
Attorney General of California
TAMAR PACHTER (SBN 146083)
Senior Assistant Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Telephone: (415) 510-3840
Fax: (415) 703-1234
tamar.pachter@doj.ca.gov
Attorneys for Ricardo Lara, Insurance Commissioner of the State of California

GREGG CONLEY
Executive Counsel
Georgia Office of Insurance and Safety Fire Commissioner
2 Martin Luther King, Jr., Drive
West Tower, Suite 702
Atlanta, GA 30334(404) 656-2070
gconley@oci.ga.gov

Counsel to the Director of the
Idaho Department of Insurance
KARL T. KLEIN

Deputy Attorney General
700 W. State St., 3rd Floor
PO Box 83720
Boise, Idaho 83720-0043
(208) 334-4204

karl.klein@doi.idaho.gov

Attorneys for Dean L. Cameron, Director of the Idaho Department of
Insurance

ROBERT ALAN WAKE
General Counsel
Maine Bureau of Insurance
34 State House Station
Augusta ME 04333-0034
robert.a.wake@maine.gov

ALEXIA EMMERMANN
Chief Insurance Counsel
Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
775-687-0712
aemmermann@doi.nv.gov

SHEILA GRACE
General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
(802) 828-3422
sheila.grace@vermont.gov

Counsel to the Washington State Insurance Commissioner
Marta U. DeLeon
Assistant Attorney General
1125 Washington Street SE

PO Box 40100
Olympia, WA 98504-0100
(360) 725-7171

RICHARD WICKA
Chief Legal Counsel
Wisconsin Office of the Commissioner of Insurance
125 S. Webster St.
Madison, WI 53703
(608) 261-6018
richard.wicka@wisconsin.gov

CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11TH CIRCUIT RULE 26.1, the undersigned counsel certifies that the following is a complete list of the trial judge and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case on appeal:

1. 450 Ventures, LLC, Affiliate of Defendants-Appellees
2. A. Duie Pyle, Inc., Plaintiff-Appellee
3. Accenda Health Company, Affiliate of Defendants-Appellees
4. Access Health, Inc., Affiliate of Defendants-Appellees
5. Accident Fund Holding, Inc., Affiliate of Defendants-Appellees
6. ACE, including ACE American Insurance Company and Illinois Union Insurance Company, Insurer of Defendants-Appellees
7. Adams & Reese, LLP, Counsel for Defendants-Appellees
8. Adamson, Virginia, Counsel for Interested Party-Appellant
9. Adcox, Rachel, Counsel for Defendants-Appellees
10. Advance Insurance Company of Kansas, Affiliate of Defendants-Appellees
11. Advanced Health Information Network, LLC, Affiliate of Defendants-Appellees

12. Aero Jet Intermediate Holdings, Inc., which is wholly owned by Aero Medical International, Inc., Parent to Plaintiffs-Appellees
13. Ahrens, Ellen M., Counsel for Plaintiffs-Appellees
14. American International Group Inc. (AIG) (including Lexington Insurance Company, National Union Insurance Company, and Illinois National Insurance Co.), Insurer of Defendants-Appellees
15. Alabama Industries Financial Corporation, Affiliate of Defendants-Appellees
16. AlaHealth, Inc., Affiliate of Defendants-Appellees
17. Alexander, Laura, Counsel for Plaintiffs-Appellees
18. Allie, Renee E., Plaintiff-Appellee
19. Allied World Assurance Company, f/k/a Darwin National and Darwin Select, Insurer of Defendants-Appellees
20. Ambrecht Jackson LLP, Counsel for Defendants-Appellees
21. America's 1st Choice of South Carolina, Inc., Subsidiary of Defendants-Appellees
22. American Electric Motor Services Inc., Plaintiff-Appellee
23. AMERIGROUP Community Care of New Mexico, Inc., Subsidiary of Defendants-Appellees
24. AMERIGROUP Corporation, Subsidiary of Defendants-Appellees

25. Amerigroup District of Columbia, Inc., Subsidiary of Defendants-Appellees
26. Amerigroup Insurance Company, Subsidiary of Defendants-Appellees
27. AMERIGROUP Iowa, Inc., Subsidiary of Defendants-Appellees
28. Amerigroup Kansas, Inc., Subsidiary of Defendants-Appellees
29. AMERIGROUP Maryland, Inc., Subsidiary of Defendants-Appellees
30. AMERIGROUP Ohio, Inc., Subsidiary of Defendants-Appellees
31. AMERIGROUP New Jersey, Inc., Subsidiary of Defendants-Appellees
32. AMERIGROUP Tennessee, Inc., Subsidiary of Defendants-Appellees
33. AMERIGROUP Texas, Inc., Subsidiary of Defendants-Appellees
34. AMERIGROUP Washington, Inc., Subsidiary of Defendants-Appellees
35. AmeriHealth, Inc., Parent to Defendants-Appellees
36. AMGP Georgia Managed Care Company, Inc., Subsidiary of Defendants-Appellees
37. Anthem Blue Cross (Blue Cross of California), Defendant-Appellee

38. Anthem Blue Cross and Blue Shield of Connecticut, Defendant-Appellee
39. Anthem Blue Cross and Blue Shield of Indiana, Defendant-Appellee
40. Anthem Blue Cross and Blue Shield of Missouri, Defendant-Appellee
41. Anthem Blue Cross and Blue Shield of New Hampshire, Defendant-Appellee
42. Anthem Blue Cross and Blue Shield of Virginia, Inc., Defendant-Appellee
43. Anthem Blue Cross Life and Health Insurance Company, Defendant-Appellee
44. Anthem Financial, Inc., Affiliate of Defendants-Appellees
45. Anthem Health Insurance Company of Nevada, Subsidiary of Defendants-Appellees
46. Anthem Health Plans of Kentucky, Inc., Defendant-Appellee
47. Anthem Health Plans of Maine, Defendant-Appellee
48. Anthem Health Plans of Maine, Inc., Defendant-Appellee
49. Anthem Health Plans of New Hampshire, Inc. (Anthem Blue Cross and Blue Shield of New Hampshire), Defendant-Appellee
50. Anthem Health Plans of Virginia, Inc. (Anthem Blue Cross and Blue Shield of Virginia Inc.), Defendant-Appellee

51. Anthem Health Plans, Inc. (Anthem Blue Cross and Blue Shield of Connecticut), Defendant-Appellee
52. Anthem Holding Corporation, Defendant-Appellee
53. Anthem Insurance Companies, Inc. (Anthem Blue Cross and Blue Shield of Indiana), Defendant-Appellee
54. Anthem, Inc. (ELV), Defendant-Appellee
55. Anthem, Inc. (Anthem Health Plans of Virginia, Inc.), Defendant-Appellee
56. Anthem, Inc. (Parent to Anthem Insurance Companies, Inc.), Defendant-Appellee
57. Anthem, Inc. (Parent to Community Insurance Company), Defendant-Appellee
58. Anthem, Inc., f/k/a Wellpoint, Inc. d/b/a Anthem Blue Cross Life and Health Insurance Company, Blue Cross of California, Blue Cross of Southern California, Blue Cross of Northern California, Rocky Mountain Hospital and Medical Service Inc. d/b/a Anthem Blue Cross Blue Shield of Colorado and Anthem Blue Cross Blue Shield of Nevada, Anthem Blue Cross Blue Shield of Connecticut, Anthem Blue Cross Blue Shield of Georgia, Anthem Blue Cross Blue Shield of Indiana, Anthem Blue Cross Blue Shield of Kentucky, Anthem

Blue Cross Blue Shield of Maine, Anthem Blue Cross Blue Shield of Missouri, RightCHOICE Managed Care, Inc., HMO Missouri Inc., Anthem Health Plans of New Hampshire as Anthem Blue Cross Blue Shield of New Hampshire, Empire HealthChoice Assurance, Inc. as Empire Blue Cross Blue Shield, Community Insurance Company as Anthem Blue Cross Blue Shield of Ohio, Anthem Blue Cross and Blue Shield of Virginia, Anthem Blue Cross Blue Shield of Wisconsin, Defendant-Appellee

59. Anthem Kentucky Managed Care Plan, Inc., Subsidiary of Defendants- Appellees

60. Anthem Life & Disability Insurance Company, Affiliate of Defendants- Appellees

61. Anthem Life Insurance Company, Defendant-Appellee

62. Anthem Partnership Holding Company, LLC, Subsidiary of Defendants-Appellees

63. Anthem Southeast, Inc., Subsidiary of Defendants-Appellees

64. Anthem Workers' Compensation, LLC, Subsidiary of Defendants-Appellees

65. APC Passe, LLC, Affiliate of Defendants-Appellees

66. Arch Insurance Company (ACGL), Insurer of Defendants-Appellees

67. Argo Re (ARGO), Insurer of Defendants-Appellees
68. Arizmendi, Sylmarie, Counsel for Defendants-Appellees
69. Arkansas Blue Cross and Blue Shield, Defendant-Appellee
70. Armbrecht Jackson LLP, Counsel for Defendants-Appellees
71. ASC Benefit Services, LLC, Affiliate of Defendants-Appellees
72. Aschenbrenner, Juanita, Plaintiff-Appellee
73. Aschenbrenner, Tom, Plaintiff-Appellee
74. Associated Group, Inc., Subsidiary of Defendants-Appellees
75. Asuris Northwest Health, Subsidiary of Defendants-Appellees
76. ATH Holding Company, LLC, Subsidiary of Defendants-Appellees
77. Ausman Law Firm, Counsel for Plaintiffs-Appellees
78. Ausman, Jason, Counsel for Plaintiffs-Appellees
79. Avalon Insurance Company, Affiliate of Defendants-Appellees
80. Avantgarde Aviation, Inc., Plaintiff-Appellee
81. Aware Integrated, Inc., Parent to Defendants-Appellees
82. Axinn, Veltrop & Harkrider, LLP, Counsel for Defendants-Appellees
83. Bailey & Glasser, LLP, Counsel for Plaintiffs-Appellees
84. Bailey, Arthur, Counsel for Plaintiffs-Appellees
85. Baird, Lisa M., Counsel for Defendants-Appellees
86. Balch & Bingham LLP, Counsel for Defendants-Appellees

87. Ball & Scott Law Offices, Counsel for Plaintiffs-Appellees
88. Ball, W. Gordon, Counsel for Plaintiffs-Appellees
89. Balmori, Daniel, Counsel for Defendants-Appellees
90. Barnes, Benjamin L., Counsel for Plaintiffs-Appellees
91. Barnett, Tyler J., Counsel for Plaintiffs-Appellees
92. Barr, Sternberg, Moss, Lawrence, Silver & Munson, P.C., Plaintiff-Appellee
93. Barstow, Erik, Plaintiff-Appellee
94. Bartlett, Inc. d/b/a Energy Savers, Plaintiff-Appellee
95. Bartony & Hare, Counsel for Plaintiffs-Appellees
96. Battin, Timothy D., Counsel for Plaintiffs-Appellees
97. Baudin, Stanley P., Counsel for Plaintiffs-Appellees
98. BCBSM, Inc. d/b/a Blue Cross Blue Shield of Minnesota, Defendant-Appellee
99. BCS Insurance Company, Insurer of Defendants-Appellees
100. Beard, Braden, Counsel for Plaintiffs-Appellees
101. Beard, Braden, Counsel for Plaintiffs-Appellees
102. Beck & Amsden PLLC, Counsel for Plaintiffs-Appellees
103. Beck, Monte D., Counsel for Plaintiffs-Appellees
104. Behenna, David G., Interested-Party-Appellant (Pro Se)

105. Belin, Eric R.G., Counsel for Plaintiffs-Appellees
106. Belt Law Firm, PC, Counsel for Plaintiffs-Appellees
107. Belt, Keith T., Counsel for Plaintiffs-Appellees
108. Belzer, Betsy Jane, Plaintiff-Appellee
109. BeneVive, Inc., Affiliate of Defendants-Appellees
110. Berger & Montague, P.C., Counsel for Plaintiffs-Appellees
111. Bernick, Justin, Counsel for Defendants-Appellees
112. Bhuta, Monika, Plaintiff-Appellee
113. Bishop, Martin J., Counsel for Defendants-Appellees
114. Bisio, Peter, Counsel for Defendants-Appellees
115. Blackrock, Inc., 10% Owner of a Plaintiff-Appellee
116. Blanchfield, Garrett, Counsel for Plaintiffs-Appellees
117. Bloomberg, Edward S., Counsel for Defendants-Appellees
118. Blue Care Network of Michigan, Affiliate of Defendants-Appellees
119. Blue Cross and Blue Shield of Alabama, Defendant-Appellee
120. Blue Cross and Blue Shield of Arizona, Defendant-Appellee
121. Blue Cross and Blue Shield of Florida, Defendant-Appellee
122. Blue Cross and Blue Shield of Florida, Inc., Defendant-Appellee
123. Blue Cross and Blue Shield of Florida, Inc. d/b/a Florida Blue,
Defendant-Appellee

124. Blue Cross and Blue Shield of Georgia, Defendant-Appellee
125. Blue Cross and Blue Shield of Georgia, Inc., Defendant-Appellee
126. Blue Cross and Blue Shield of Illinois, Affiliate of Defendants-
127. Blue Cross and Blue Shield of Kansas, Defendant-Appellee
128. Blue Cross and Blue Shield of Kansas City, Defendant-Appellee
129. Blue Cross and Blue Shield of Kansas Foundation, Affiliate of
Defendants-Appellees
130. Blue Cross and Blue Shield of Kansas, Inc., Defendant-Appellee
131. Blue Cross and Blue Shield of Louisiana, Defendant-Appellee
132. Blue Cross and Blue Shield of Massachusetts, Defendant-Appellee
133. Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc.,
Affiliate of Defendants-Appellees
134. Blue Cross and Blue Shield of Massachusetts, Inc., Defendant-
Appellee
135. Blue Cross and Blue Shield of Michigan, Defendant-Appellee
136. Blue Cross and Blue Shield of Minnesota, Defendant-Appellee
137. Blue Cross and Blue Shield of Mississippi, Defendant-Appellee
138. Blue Cross and Blue Shield of Montana, Affiliate of Defendants-
Appellees
139. Blue Cross and Blue Shield of Nebraska, Defendant-Appellee

140. Blue Cross and Blue Shield of New Mexico, Affiliate of
Defendants- Appellees
141. Blue Cross and Blue Shield of North Carolina, Defendant-Appellee
142. Blue Cross and Blue Shield of North Carolina, Inc., Defendant-
Appellee
143. Blue Cross and Blue Shield of North Dakota, Defendant-Appellee
144. Blue Cross and Blue Shield of Oklahoma, Affiliate of Defendants-
Appellees
145. Blue Cross and Blue Shield of Rhode Island, Defendant-Appellee
146. Blue Cross and Blue Shield of South Carolina, Defendant-Appellee
147. Blue Cross and Blue Shield of Tennessee, Defendant-Appellee
148. Blue Cross and Blue Shield of Tennessee, Inc., Defendant-Appellee
149. Blue Cross and Blue Shield of Texas, Affiliate of Defendants-
Appellees
150. Blue Cross and Blue Shield of Vermont, Defendant-Appellee
151. Blue Cross and Blue Shield of Wyoming, Defendant-Appellee
152. Blue Cross Blue Shield Association, Defendant-Appellee
153. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.,
Defendant- Appellee
154. Blue Cross Blue Shield of Alabama, Defendant-Appellee

155. Blue Cross Blue Shield of Arizona, Defendant-Appellee
156. Blue Cross Blue Shield of Florida, Defendant-Appellee
157. Blue Cross Blue Shield of Massachusetts, Defendant-Appellee
158. Blue Cross Blue Shield of Michigan, Defendant-Appellee
159. Blue Cross Blue Shield of Michigan Mutual Insurance Company,
Defendant-Appellee
160. Blue Cross Blue Shield of Minnesota, Defendant-Appellee
161. Blue Cross Blue Shield of Mississippi, a Mutual Insurance
Company, Defendant-Appellee
162. Blue Cross Blue Shield of Montana, Defendant-Appellee
163. Blue Cross Blue Shield of Nebraska, Defendant-Appellee
164. Blue Cross Blue Shield of North Carolina, Defendant-Appellee
165. Blue Cross Blue Shield of North Dakota, Defendant-Appellee
166. Blue Cross Blue Shield of Northeastern Pennsylvania, Defendant-
Appellee
167. Blue Cross Blue Shield of Rhode Island, Defendant-Appellee
168. Blue Cross Blue Shield of South Carolina, Defendant-Appellee
169. Blue Cross Blue Shield of Tennessee, Defendant-Appellee
170. Blue Cross Blue Shield of Vermont, Defendant-Appellee

171. Blue Cross Blue Shield of Wisconsin (Anthem Blue Cross Blue Shield of Wisconsin), Defendant-Appellee
172. Blue Cross Blue Shield of Wyoming, Defendant-Appellee
173. Blue Cross Complete of Michigan, LLC, Affiliate of Defendants-Appellees
174. Blue Cross of California Partnership Plan, Inc., Defendant-Appellee
175. Blue Cross of Idaho Care Plus, Inc., Affiliate of Defendants-Appellees
176. Blue Cross of Idaho Health Service, Inc., Defendant-Appellee
177. Blue Cross of Northeastern Pennsylvania - Wilkes-Barre, Defendant- Appellee
178. BlueChoice HealthPlan of South Carolina, Inc., Affiliate of Defendants- Appellees
179. BlueCross and BlueShield of North Carolina Senior Health, Affiliate of Defendants-Appellees
180. BlueCross BlueShield Kansas Solutions, Affiliate of Defendants-Appellees
181. Blue Shield of California, Defendant-Appellee
182. Blue Shield of California Life & Health Insurance Company, Subsidiary of Defendants-Appellees

183. BMH, LLC, Affiliate of Defendants-Appellees
184. Bodman PLC, Counsel for Defendants-Appellees
185. Boies, Alexander McInnis, Counsel for Plaintiffs-Appellees
186. Boies, David, Counsel for Plaintiffs-Appellees
187. Boies, Schiller & Flexner LLP, Counsel for Plaintiffs-Appellees
188. Bojedla, Swathi, Counsel for Plaintiffs-Appellees
189. Bondurant Mixson & Elmore, LLP, Counsel for Interested Party-
Appellant
190. Boozer Law Firm, LLC, Counsel for Plaintiffs-Appellees
191. Borgeest, Wayne, Counsel for Insurer
192. Bowling, Jeffrey L., Counsel for Plaintiffs-Appellees
193. Boyd, Matthew Allan Plaintiff-Appellee
194. Bradberry, Christy, Plaintiff-Appellee
195. Bradberry, Kevin, Plaintiff-Appellee
196. Bradley Arant Boult Cummings, LLP, Counsel for Interested Party-
Appellant
197. BridgeSpan Health Company, Subsidiary of Defendants-Appellees
198. Briggs, John, Counsel for Defendants-Appellees
199. Brijbasi, Vijay G., Counsel for Defendants-Appellees
200. Bronster Hoshibata, Counsel for Plaintiffs-Appellees

201. Bronster, Margery S., Counsel for Plaintiffs-Appellees
202. Brooks, John, Counsel for Insurer
203. Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Counsel for
Defendants-Appellees
204. Bronster, Fujichaka, Robbins, ALC, Counsel for Plaintiffs-
Appellees
205. Bruner, Robert “Bo” P., Counsel for Plaintiffs-Appellees
206. Brunini, Grantham, Grower & Hewes, PLLC, Counsel for
Defendants- Appellees
207. Buchanan, Virginia, Counsel for Plaintiffs-Appellees
208. Burkhalter, Carl S., Counsel for Defendants-Appellees
209. Burns Charest LLP, Counsel for Plaintiffs-Appellees
210. Burns, Eric, Counsel for Plaintiffs-Appellees
211. Burns, Warren T., Counsel for Plaintiffs-Appellees
212. Burr & Forman LLP, Counsel for Insurer
213. Bustamante, Travis A., Counsel for Defendants-Appellees
214. Cafferty Clobes Meriwether & Sprengel LLP, Counsel for Plaintiffs-
Appellees
215. Cafferty, Patrick, Counsel for Plaintiffs-Appellees

- 216. Cahaba Government Benefit Administrators, LLC, Affiliate of
Defendants-Appellees
- 217. Cahaba Medical Care, Defendant-Appellee
- 218. Cahaba Safeguard Administrators, LLC, Affiliate of Defendants-
Appellees
- 219. Caliendo, Charles T., Counsel for Plaintiffs-Appellees
- 220. California Physicians' Service, Defendant-Appellee
- 221. California Physicians' Service, d/b/a Blue Shield of California,
Defendant-Appellee
- 222. Callister, Joshua, Counsel for Plaintiffs-Appellees
- 223. Cambia Health Solutions, Inc., f/d/b/a Regence Blue Shield of
Idaho, Regence Blue Cross Blue Shield of Oregon, Regence Blue
Cross Blue Shield of Utah, Regence Blue Shield of Washington,
Defendant- Appellee
- 224. Campbell Partners, Counsel for Defendants-Appellees
- 225. Campbell, A. Todd, Counsel for Defendants-Appellees
- 226. Campbell, Andrew P., Counsel for Defendants-Appellees
- 227. Capital Administrative Services, Inc., Affiliate of Defendants-
Appellees

- 228. Capital Advantage Assurance Company, Affiliate of Defendants-Appellees
- 229. Capital Advantage Insurance Company, Affiliate of Defendants-Appellees
- 230. Capital BlueCross, Defendant-Appellee
- 231. Capital Health Plan, Inc., Affiliate of Defendants-Appellees
- 232. CareFirst Blue Cross and Blue Shield of Maryland, Defendant-Appellee
- 233. CareFirst BlueChoice, Inc., Defendant-Appellee
- 234. CareFirst BlueCross BlueShield, d/b/a Group Hospitalization and Medical Services and CareFirst Blue Cross Blue Shield of Maryland, Defendant-Appellee
- 235. CareFirst Holdings, Inc., Parent to Defendants-Appellees
- 236. CareFirst of Maryland, Inc., Defendant-Appellee
- 237. CareFirst of Maryland, Inc. d/b/a CareFirst BlueCross BlueShield, Defendant-Appellee
- 238. CareFirst, Inc., Defendant-Appellee
- 239. CareMore Health Plan, Subsidiary of Defendants-Appellees
- 240. CareMore Health Plan of Arizona, Inc., Subsidiary of Defendants-Appellees

- 241. CareMore Health Plan of Nevada, Subsidiary of Defendants-Appellees
- 242. CareMore Health Plan of Texas, Inc., Subsidiary of Defendants-Appellees
- 243. CareMore Health System, Subsidiary of Defendants-Appellees
- 244. Caring for Montanans, Inc., f/k/a Blue Cross and Blue Shield of Montana, Inc., Defendant-Appellee
- 245. Caring for Montanans, Inc., Defendant-Appellee
- 246. Caring Foundation, Affiliate of Defendants-Appellees
- 247. Carlson Lynch, Ltd., Counsel for Plaintiffs-Appellees
- 248. Carlson Lynch Sweet Kilpela & Carpenter, LLP, Counsel for Plaintiffs-Appellees
- 249. Carr, James P., Counsel for Plaintiffs-Appellees
- 250. Casa Blanca, LLC, Plaintiff-Appellee
- 251. Casey, Justine, Counsel for Insurer
- 252. Catamount Insurance Services, Inc., Affiliate of Defendants-Appellees
- 253. Cavanaugh, Patrick K., Counsel for Plaintiffs-Appellees
- 254. CB Roofing LLC, Plaintiff-Appellee
- 255. CCHA, LLC, Subsidiary of Defendants-Appellees

- 256. Cerulean Companies, Inc., Subsidiary of Defendants-Appellees
- 257. Cerven, Keith O., Plaintiff-Appellee
- 258. Cerven, Teresa, M., Plaintiff-Appellee
- 259. CGS Administrators, LLC, Affiliate of Defendants-Appellees
- 260. Chadrow & Associates, Counsel for Plaintiffs-Appellees
- 261. Chapman, Lewis & Swan, PLLC, Counsel for Plaintiffs-Appellees
- 262. Chapman, Ralph E., Counsel for Plaintiffs-Appellees
- 263. Charles M. Thompson PC, Counsel for Plaintiffs-Appellees
- 264. Charnes, Adam H., Counsel for Defendants-Appellees
- 265. Chavez, Kathleen, Counsel for Plaintiffs-Appellees
- 266. Chesler, Evan, Counsel for Defendants-Appellees
- 267. Childress, Jennifer D., Plaintiff-Appellee
- 268. Chubb (CB) (including Federal Insurance and Executive Risk),
Insurer of Defendants-Appellees
- 269. Cihlar, Nate, Counsel for Plaintiffs-Appellees
- 270. Claim Management Services, Inc., Subsidiary of Defendants-
Appellees
- 271. Clark, Anna Mercado, Counsel for Defendants-Appellees
- 272. Clement, Paul D., Counsel for Defendants-Appellees
- 273. Clobes, Bryan, Counsel for Plaintiffs-Appellees

- 274. Cobalt Benefits Group, LLC, Affiliate of Defendants-Appellees
- 275. COBX Inc., Affiliate of Defendants-Appellees
- 276. Cochran, George W., Counsel for Interested Party-Appellant
- 277. Cochran, Jennifer, Interested Party-Appellant (Pro Se)
- 278. Coffey Burlington, Counsel for Defendants-Appellees
- 279. Coffin, Christopher, Counsel for Plaintiffs-Appellees
- 280. Cohen Milstein Sellers & Toll PLLC, Counsel for Plaintiffs-Appellees
- 281. Cohen, Lucile H., Counsel for Defendants-Appellees
- 282. Colatriano, Vincent J., Counsel for Plaintiffs-Appellees
- 283. Comet Capital LLC, Plaintiff-Appellee
- 284. Commencement Bay Risk Management Insurance Company, Subsidiary of Defendants-Appellees
- 285. Community Care Health Plan of Louisiana, Inc. d/b/a Healthy Blue, Subsidiary of Defendants-Appellees
- 286. Community Care Health Plan of Nevada, Inc., Subsidiary of Defendants-Appellees
- 287. Community Insurance Company, Defendant-Appellee
- 288. Community Insurance Company as Anthem Blue Cross Blue Shield of Ohio, Defendant-Appellee

- 289. Companion Benefit Alternatives, Inc., Affiliate of Defendants-Appellees
- 290. Companion Data Services, LLC, Affiliate of Defendants-Appellees
- 291. Companion Life Insurance Company, Affiliate of Defendants-Appellees
- 292. Companion Life Insurance Company of California, Affiliate of Defendants-Appellees
- 293. Comparato, Paige, Counsel for Defendants-Appellees
- 294. Compcare Health Services Insurance Corporation, Affiliate of Defendants-Appellees
- 295. Comprehensive Benefits Administrators, Inc., Affiliate of Defendants-Appellees
- 296. Concepcion Martinez & Bellido, Counsel for Defendants-Appellees
- 297. Concepcion, Esq., Carlos F., Counsel for Defendants-Appellees)
- 298. Connally, III, N. Thomas, Counsel for Defendants-Appellees
- 299. Conner, Timothy J., Counsel for Defendants-Appellees
- 300. Connor, Glen M., Counsel for Plaintiffs-Appellees
- 301. Conrad Watson Air Conditioning, Inc., Plaintiff-Appellee
- 302. Consolidated Benefits, Inc., Affiliate of Defendants-Appellees

- 303. Consumer Financial Education Foundation of America, Inc.,
Plaintiff- Appellee
- 304. Conway, D.C., Jerry L., Plaintiff-Appellee
- 305. Coolidge, Melinda, Counsel for Plaintiffs-Appellees
- 306. Cooper & Kirk, PLLC, Counsel for Plaintiffs-Appellees
- 307. Cooper, Charles J., Counsel for Plaintiffs-Appellees
- 308. Cooper, Davis, Counsel for Plaintiffs-Appellees
- 309. Corporate Benefits Services, Inc., Affiliate of Defendants-Appellees
- 310. Cory Watson Crowder & DeGaris, P.C., Counsel for Plaintiffs-
Appellees
- 311. Cory Watson, P.C., Counsel for Plaintiffs-Appellees
- 312. Costello, Honor R., Counsel for Defendants-Appellees
- 313. Cottrell, P.C., Christa C., Counsel for Defendants-Appellees
- 314. Coulson, David A., Counsel for Defendants-Appellees
- 315. Cowan, R. Christopher, Counsel for Plaintiffs-Appellees
- 316. Cowan Law Firm, Counsel for Plaintiffs-Appellees
- 317. Cozen O'Connor, Counsel for Plaintiffs-Appellees
- 318. Craker, Aaron, Interested Party-Appellant (Pro Se)
- 319. Cramer, Eric L., Counsel for Plaintiffs-Appellees
- 320. Cravath Swaine & Moore, Counsel for Defendants-Appellees

- 321. Crispin, R. Randal, Counsel for Insurer
- 322. Crossroads Acquisition Corp., Subsidiary of Defendants-Appellees
- 323. Crowe & Dunlevy, Counsel for Defendants-Appellees
- 324. Crowell & Moring LLP, Counsel for Defendants-Appellees
- 325. Cude, Donna Smith, Counsel for Plaintiffs-Appellees
- 326. Cunningham, Mark A., Counsel for Defendants-Appellees
- 327. Curtis, Frank, Plaintiff-Appellee
- 328. Cylkowski, Sarah L., Counsel for Defendants-Appellees
- 329. Dampier Law Group, P.C., Counsel for Plaintiffs-Appellees
- 330. Dampier, M. Stephen, Counsel for Plaintiffs-Appellees
- 331. Davidson, Jennifer Ray, Plaintiff-Appellee
- 332. Davis, Greg, Counsel for Plaintiffs-Appellees
- 333. Deal, Cooper, & Holton, LLP, Counsel for Plaintiffs-Appellees
- 334. DeCare Dental, LLC, Subsidiary of Defendants-Appellees
- 335. DeCare Dental Health International, LLC, Subsidiary of Defendants-Appellees
- 336. DeCare Dental Insurance Ireland, Ltd., Subsidiary of Defendants-Appellees
- 337. DeCare Dental Networks, LLC, Subsidiary of Defendants-Appellees
- 338. DeGaris, Annesley H., Counsel for Plaintiffs-Appellees

- 339. Del Sole Cavanaugh Stroyd, LLC, Counsel for Plaintiffs-Appellees
- 340. Del Sole, Steven J., Counsel for Plaintiffs-Appellees
- 341. Dellaccio, Douglas, Counsel for Plaintiffs-Appellees
- 342. DeMasi, Karin, Counsel for Defendants-Appellees
- 343. Dental Management Administrators, Inc., Affiliate of Defendants-Appellees
- 344. Designated Agent Company, Inc., Subsidiary of Defendants-Appellees
- 345. Dickinson Wright, PLLC, Counsel for Defendants-Appellees
- 346. Dickinson, Mackaman, Tyler & Hagen, P.C., Counsel for Defendants- Appellees
- 347. Diddle, Samuel A., Counsel for Defendants-Appellees
- 348. Doherty, Ronan, Counsel for Interested Party-Appellant
- 349. Dominick Feld Hyde PC, Counsel for Plaintiffs-Appellants
- 350. Dominion Dental Services of New Jersey, Inc., Affiliate of Defendants- Appellees
- 351. Dominion Dental Services USA, Inc., Dominion National, Affiliate of Defendants-Appellees
- 352. Dominion Dental Services, Inc., d/b/a Dominion National, Affiliate of Defendants-Appellees

- 353. Dominion Dental USA, Inc., Affiliate of Defendants-Appellees
- 354. Dominion National Insurance Company of New Jersey, Affiliate of
Defendants-Appellees
- 355. Donaldson Guin LLC, Counsel for Plaintiffs-Appellees
- 356. Donnell, Sarah J., Counsel for Defendants-Appellees
- 357. Dorr, Jr., Luther M., Counsel for Defendants-Appellees
- 358. Draper, Hayward L., Counsel for Defendants-Appellees
- 359. Dryden, Benjamin R., Counsel for Defendants-Appellees
- 360. Dyer, Karen, Counsel for Plaintiffs-Appellees
- 361. EAP Alliance Incorporated, Affiliate of Defendants-Appellees
- 362. Eberle Berlin, Kading, Turnbow & McKlveen, Chartered, Counsel
for Defendants-Appellees
- 363. EEPA, LLC, Affiliate of Defendants-Appellees
- 364. Eisler, Robert, Counsel for Plaintiffs-Appellees
- 365. Empire HealthChoice Assurance, Inc., Defendant-Appellee
- 366. Empire HealthChoice Assurance, Inc., f/k/a Empire Blue Cross Blue
Shield, Defendant-Appellee
- 367. Empire HealthChoice HMO, Inc., Subsidiary of Defendants-
Appellees
- 368. Employee Services, Inc., Interested Party-Appellant

- 369. Encore System Professionals, LLC, Affiliate of Defendants-Appellees
- 370. Endurance Specialty Insurance Ltd., Insurer of Defendants-Appellees
- 371. Enterprise Law Group, LLP, Counsel for Plaintiffs-Appellees
- 372. Entrust Administrative Services, Inc., Affiliate of Defendants-Appellees
- 373. Entrust Agencies, LLC, Affiliate of Defendants-Appellees
- 374. Entrust Group, Inc., Affiliate of Defendants-Appellees
- 375. Entrust, LLC, Affiliate of Defendants-Appellees
- 376. Excellus Blue Cross Blue Shield, Defendant-Appellee
- 377. Excellus BlueCross BlueShield of New York, Defendant-Appellee
- 378. Excellus Health Plan, Inc. d/b/a Excellus BlueCrossBlueShield, Defendant-Appellee
- 379. Excellus Healthcare, Inc., d/b/a Excellus BlueCross BlueShield, Defendant-Appellee
- 380. Faegre Baker Daniels LLP, Counsel for Defendants-Appellees
- 381. Feinstein, Richard A., Counsel for Plaintiffs-Appellees
- 382. Ficaro, James, Counsel for Plaintiffs-Appellees
- 383. First Administrators, Inc., Defendant-Appellee

- 384. Fleming, Michael J., Counsel for Plaintiffs-Appellees
- 385. Florida Combined Life, Affiliate of Defendants-Appellees
- 386. Florida Health Care Plan, Inc., Affiliate of Defendants-Appellees
- 387. Freedom Health, Inc., Subsidiary of Defendants-Appellees
- 388. Foley & Lardner LLP, Counsel for Defendants-Appellees
- 389. Foote, Mielke, Chavez & O'Neil LLC, Counsel for Plaintiffs-Appellees
- 390. Foote, Robert M., Counsel for Plaintiffs-Appellees
- 391. Forbes Law Group, LLC, Counsel for Plaintiffs-Appellees
- 392. Forbes, Frankie J, Counsel for Plaintiffs-Appellees
- 393. Forsythe, Debora, Plaintiff-Appellee
- 394. Forsythe, Tony, Plaintiff-Appellee
- 395. Fort McClellan Credit Union, Plaintiff-Appellee
- 396. Fowler, Jeffrey John, Counsel for Defendants-Appellees
- 397. Franz, Morgan B., Counsel for Defendants-Appellees
- 398. Free State Growers, Inc., Plaintiffs-Appellees
- 399. Freedman Boyd Hollander, Counsel for Plaintiffs-Appellees
- 400. Fronk, Casey R., Counsel for Defendants-Appellees
- 401. Fujichaku, Rex Y., Counsel for Plaintiffs-Appellees
- 402. G&S Trailer Repair Inc., Plaintiff-Appellee

- 403. Galactic Funk Touring, Inc., Plaintiff-Appellee
- 404. Gankendorff, Edgar D., Counsel for Plaintiffs-Appellees
- 405. Garner, Jeffrey S., Plaintiff-Appellee
- 406. Gaston CPA Firm, P.C., Plaintiff-Appellee
- 407. GC/AAA Fences, Inc., Plaintiff-Appellee
- 408. Gebremariam, Helam, Counsel for Defendants-Appellees
- 409. Geneia Holdings LLC, Affiliate of Defendants-Appellees
- 410. Geneia Insights and Innovations LLC, Affiliate of Defendants-Appellees
- 411. Geneia LLC, Affiliate of Defendants-Appellees
- 412. Geneia Management Solutions LLC, Affiliate of Defendants-Appellees
- 413. Gentle III, Edgar C., Special Master
- 414. Giarmarco, Mullins & Horton, P.C., Counsel for Plaintiffs-Appellees
- 415. Giglio, Jr., Joseph C., Counsel for Defendants-Appellees
- 416. Gilbert, Sarah, Counsel for Defendants-Appellees
- 417. Gillis, H. Lewis, Counsel for Plaintiffs-Appellees
- 418. Given, Robert S. W., Counsel for Defendants-Appellees
- 419. Global TPA, LLC, Subsidiary of Defendants-Appellees

- 420. Golden Security Insurance Co., Affiliate of Defendants-Appellees
- 421. Golden West Health Plan, Inc., Subsidiary of Defendants-Appellees
- 422. Goodin, Janeen, Plaintiff-Appellee
- 423. Goodman, Jason, Plaintiff-Appellee
- 424. Goodman, Tom A., Plaintiff-Appellee
- 425. Goodsir, David, Counsel for Defendants-Appellees
- 426. Gordon Ball Law Office, Counsel for Plaintiffs-Appellees
- 427. Gordon Jr., Ben W., Counsel for Plaintiffs-Appellees
- 428. Government Management Services, LLC, Affiliate of Defendants-Appellees
- 429. Grabar Law Office, Counsel for Plaintiffs-Appellees
- 430. Grant & Eisenhofer, Counsel for Plaintiffs-Appellees
- 431. Greg Davis Law, LLC, Counsel for Plaintiffs-Appellees
- 432. Greater Georgia Life Insurance Company, Subsidiary of Defendants-Appellees
- 433. Green, Cheri D., Counsel for Defendants-Appellees
- 434. Greenberg Traurig, PA, Counsel for Defendants-Appellees
- 435. Group Hospitalization and Medical Services, Inc., Defendant-Appellee

- 436. Group Hospitalization and Medical Services, Inc. d/b/a CareFirst
BlueCross BlueShield, Defendant-Appellee
- 437. Group Insurance Services, Inc., Affiliate of Defendants-Appellees
- 438. GuideWell Mutual Holding Corporation, Parent to Defendants-
Appellees
- 439. Guin, David J., Counsel for Plaintiffs-Appellees
- 440. Guin, Stokes & Evans, LLC, Counsel for Plaintiffs-Appellees
- 441. Gustafson Gluek PLLC, Counsel for Plaintiffs-Appellees
- 442. Gustafson, Daniel E., Counsel for Plaintiffs-Appellees
- 443. Haden, Ed R., Counsel for Defendants-Appellees
- 444. Hansen, Chad D., Counsel for Defendants-Appellees
- 445. Hare, Scott M., Counsel for Plaintiffs-Appellees
- 446. Harrell, J. Wells, Counsel for Plaintiffs-Appellees
- 447. Harvalis, Jim, Affiliated with Counsel for Defendants-Appellees
- 448. Harwood, Jr., Hon. R. Bernard, Special Master
- 449. Hauser, Brian C., Counsel for Defendants-Appellees
- 450. Hausfeld LLP, Counsel for Plaintiffs-Appellees
- 451. Hausfeld, Michael, Counsel for Plaintiffs-Appellees
- 452. Hawaii Medical Service Association d/b/a Blue Cross and Blue
Shield of Hawaii, Defendant-Appellee

- 453. Hawran, Gregory R., Counsel for Defendants-Appellees
- 454. Hayes, Lisa N., Counsel for Plaintiffs-Appellees
- 455. Hazzard Law, LLC, Counsel for Plaintiffs-Appellees
- 456. Hazzard, Brent, Counsel for Plaintiffs-Appellees
- 457. HD Operations Holding Company, Inc.
- 458. Health and Wellness Partners, Inc., Affiliate of Defendants-Appellees
- 459. Healthbox Nashville LLC, Affiliate of Defendants-Appellees
- 460. Health Care Service Corporation, Defendant-Appellee
- 461. Health Care Service Corporation d/b/a Blue Cross Blue Shield of Illinois, Blue Cross Blue Shield of New Mexico, Blue Cross Blue Shield of Oklahoma, Blue Cross and Blue Shield of Montana, Blue Cross Blue Shield of Texas, Defendant-Appellee
- 462. Healthcare Business Solutions, LLC, Affiliate of Defendants-Appellees
- 463. HealthKeepers, Inc., Subsidiary of Defendants-Appellees
- 464. HealthLink HMO, Inc., Subsidiary of Defendants-Appellees
- 465. HealthLink, Inc., Subsidiary of Defendants-Appellees
- 466. Healthcare Management Administrators, Inc., Subsidiary of Defendants-Appellees

- 467. Health Management Corporation, Subsidiary of Defendants-Appellees
- 468. HealthNow New York Inc., Defendant-Appellee
- 469. HealthNow New York Inc., d/b/a Blue Cross Blue Shield of Western New York and Blue Shield of Northeastern New York, Defendant-Appellee
- 470. HealthNow Systems, Inc., Defendant-Appellee
- 471. Health Options, Inc., Affiliate of Defendants-Appellees
- 472. HealthPlus HP, LLC, Subsidiary of Defendants-Appellees
- 473. HealthSun Health Plans, Inc., Subsidiary of Defendants-Appellees
- 474. Healthy Alliance Life Insurance Company, Defendant-Appellee
- 475. Hedlund, Daniel C., Counsel for Plaintiffs-Appellees
- 476. Hellums, Chris T., Counsel for Plaintiffs-Appellees
- 477. Hendren & Malone PLLC, Counsel for Plaintiffs-Appellees
- 478. Herman, Matthew J., Counsel for Plaintiffs-Appellees
- 479. Hess, Hess & Daniel, P.C., Plaintiff-Appellee
- 480. Hibbett Retail, Inc., Plaintiff-Appellee
- 481. Hibbett Sporting Goods, Inc., Plaintiff-Appellee
- 482. Hibbett Inc. (Nasdaq: HIBB), Parent of Plaintiff-Appellee

- 483. Highmark Blue Cross and Blue Shield of Delaware, Affiliate of Defendants-Appellees
- 484. Highmark Blue Cross Blue Shield of Delaware, Inc., Defendant-Appellee
- 485. Highmark Blue Cross Blue Shield of West Virginia, Defendant-Appellee
- 486. Highmark Health, Parent to Defendants-Appellees
- 487. Highmark Health Services, d/b/a Highmark Blue Cross Blue Shield of Delaware, Highmark Blue Cross Blue Shield, and Highmark Blue Cross Blue Shield of West Virginia, Defendant-Appellee
- 488. Highmark Inc., Defendant-Appellee
- 489. Highmark West Virginia Inc., Affiliate of Defendants-Appellees
- 490. Highway to Health, Inc., Affiliate of Defendants-Appellees
- 491. Hill, Hill, Carter, Franco, Cole, & Black, PC, Counsel for Defendants-Appellees
- 492. Hill, Angie, Plaintiff-Appellee
- 493. Hill, Ross, Plaintiff-Appellee
- 494. HMO Colorado, Subsidiary of Defendants-Appellees
- 495. HMO Louisiana, Inc., Affiliate of Defendants-Appellees
- 496. HMO Missouri Inc., Defendant-Appellee

- 497. HMO Missouri, Inc. (Anthem Blue Cross and Blue Shield of Missouri), Defendant-Appellee
- 498. HMO Partners, Inc., Affiliate of Defendants-Appellees
- 499. HMSA BSH, Inc., Affiliate of Defendants-Appellees
- 500. HMSA Foundation, Inc., Affiliate of Defendants-Appellees
- 501. Hodge, David J., Counsel for Plaintiffs-Appellees
- 502. Hofmeister, Dan, Counsel for Defendants-Appellees
- 503. Hogan Lovells US LLP, Counsel for Defendants-Appellees
- 504. Hogan, E. Desmond, Counsel for Defendants-Appellees
- 505. Hogewood, Mark M., Counsel for Defendants-Appellees
- 506. Holland & Knight, Counsel for Defendants-Appellees
- 507. Holmes, Janet Brooks, Counsel for Plaintiffs-Appellees
- 508. Holmstead, Zachary D., Counsel for Defendants-Appellees
- 509. Holton, John R., Counsel for Plaintiffs-Appellees
- 510. Holton, Timothy R., Counsel for Plaintiffs-Appellees
- 511. Home Depot Group Benefits Plan
- 512. The Home Depot, Inc. (HD)
- 513. The Home Depot Medical and Dental Plan
- 514. The Home Depot U.S.A., Inc., Interested Party-Appellant
- 515. Homer Law Firm, PC, Counsel for Plaintiffs-Appellees

- 516. Hoover, Craig A., Counsel for Defendants-Appellees
- 517. Horizon Blue Cross and Blue Shield of New Jersey, Defendant-Appellee
- 518. Horizon Blue Cross Blue Shield of New Jersey, Defendant-Appellee
- 519. Horizon Casualty Services, Inc., Affiliate of Defendants-Appellees
- 520. Horizon Healthcare Dental, Inc., Affiliate of Defendants-Appellees
- 521. Horizon Healthcare of New Jersey, Inc. (which also operates under the name Horizon NJ Health), Affiliate of Defendants-Appellees
- 522. Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross and BlueShield of New Jersey, Defendant-Appellee
- 523. Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, Defendant-Appellee
- 524. Horizon Insurance Company, Affiliate of Defendants-Appellees
- 525. Horner, Chelsea L., a.k.a. Chelsea Horner Templeton, Plaintiff-Appellee.
- 526. Horton, William H., Counsel for Plaintiffs-Appellees
- 527. Hospital Service Association of Northeastern Pennsylvania d/b/a Blue Cross of Northeastern Pennsylvania, Defendant-Appellee
- 528. Hospital Service Association of Northeastern Pennsylvania d/b/a Blue Cross of Northeastern Pennsylvania, Defendant-Appellee

- 529. Hume, Hamish P.M., Counsel for Plaintiffs-Appellees
- 530. IMA, Inc., Affiliate of Defendants-Appellees
- 531. Ichter, Davis, Counsel for Plaintiffs-Appellees
- 532. Independence Blue Cross, LLC, Parent to Defendants-Appellees
- 533. Independence Health Group Inc., Parent to Defendants-Appellees
- 534. Independence Hospital Indemnity Plan, Inc., f/k/a Independence
Blue Cross, Defendant-Appellee
- 535. IngenioRx, Inc., Subsidiary of Defendants-Appellees
- 536. Instil Health Insurance Company, Affiliate of Defendants-Appellees
- 537. Insua, Nicholas, Counsel for Defendants-Appellees
- 538. Integrated Services, Inc., Affiliate of Defendants-Appellees
- 539. International Plan Solutions, LLC, Affiliate of Defendants-
Appellees
- 540. Iron Gate Technology, Inc., Plaintiff-Appellee
- 541. Ironshore Inc., Insurer of Defendants-Appellees
- 542. Iron-Starr Excess Agency Ltd., Insurer of Defendants-Appellees
- 543. Isaacson, William A., Counsel for Plaintiffs-Appellees
- 544. Jackson, Anthony F., Counsel for Plaintiff-Appellee
- 545. James Hoyer, P.A., Plaintiff-Appellee
- 546. Jameson, Joel, Plaintiffs-Appellees

- 547. Jenks and Associates, Counsel for Plaintiffs-Appellees
- 548. Jenks III, James K., Counsel for Plaintiffs-Appellees
- 549. Jenner & Block LLP, Counsel for Defendants-Appellees
- 550. Jewelers Trade Shop, Plaintiff-Appellee
- 551. John D. Saxon, P.C., Counsel for Plaintiffs-Appellees
- 552. Johnson, John M., Counsel for Defendants-Appellees
- 553. Johnston, Clint, Plaintiff-Appellee
- 554. Jones & Swartz PLLC, Counsel for Plaintiffs-Appellees
- 555. Jones Ward PLC, Counsel for Plaintiffs-Appellees
- 556. Jones, Bruce C., Counsel for Plaintiffs-Appellees
- 557. Jones, Lawrence, Counsel for Plaintiffs-Appellees
- 558. Jones, Megan, Counsel for Plaintiffs-Appellees
- 559. Jose, Elizabeth, Counsel for Defendants-Appellees
- 560. Kalisky, Alyssa C., Counsel for Defendants-Appellees
- 561. Kapke & Willerth LLC, Counsel for Plaintiffs-Appellees
- 562. Kaplan, Andrew D., Counsel for Defendants-Appellees
- 563. Kappel, Brian P., Counsel for Defendants-Appellees
- 564. Kaufman, R. David, Counsel for Defendants-Appellees
- 565. Kaufman Borgeest & Ryan LLP, Counsel for Insurer
- 566. Kellner, William E., Counsel for Defendants-Appellees

- 567. Kelso, Trent, Plaintiff-Appellee
- 568. Kennedy, Lauren R., Counsel for Defendants-Appellees
- 569. Kenney, Jeannine M., Counsel for Plaintiffs-Appellees
- 570. Keystone Health Plan Central, Inc., Affiliate of Defendants-Appellees
- 571. Keystone Medical Imaging, LLC, Affiliate of Defendants-Appellees
- 572. Kilene, Jason S., Counsel for Plaintiffs-Appellees
- 573. Kilpatrick Townsend & Stockton LLP, Counsel for Defendants-Appellees
- 574. Kilpela, Jr., Edwin, J., Counsel for Plaintiffs-Appellees
- 575. Kimble, Cavender C., Counsel for Defendants-Appellees
- 576. Kirk, Michael, Counsel for Plaintiffs-Appellees
- 577. Kirkland & Ellis LLP, Counsel for Defendants-Appellees
- 578. Knapp, Scott R., Counsel for Defendants-Appellees
- 579. Knott, Jason M., Counsel for Plaintiffs-Appellees
- 580. Koch, H. James, Counsel for Defendants-Appellees
- 581. Kochanowski, Andrew J., Counsel for Plaintiffs-Appellees
- 582. Korn, David H., Counsel for Defendants-Appellees
- 583. Kravitz, Carl S., Counsel for Plaintiffs-Appellees
- 584. Krieger, Mark, Plaintiff-Appellee

- 585. Kudulis, Johnathan, Counsel for Plaintiffs-Appellees
- 586. Kudulis, Resisinger, & Price, Counsel for Plaintiffs-Appellees
- 587. Labauve, Elizabeth Barnett, Counsel for Defendants-Appellees
- 588. Lambert, Kenneth, Counsel for Defendants-Appellees
- 589. Langston & Lott, P.A., Counsel for Plaintiffs-Appellees
- 590. L Laytin, P.C., Daniel E., Counsel for Defendants-Appelleesaw
Office of Stephen M. Hansen, Counsel for Plaintiffs-Appellees
- 591. Laytin, P.C., Daniel E., Counsel for Defendants-Appellees
- 592. Lemmon Law Firm, Counsel for Plaintiffs-Appellees
- 593. Lemmon, Andrew, Counsel for Plaintiffs-Appellees
- 594. Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.,
Counsel for Plaintiffs-Appellees
- 595. Lieberman, Michael W., Counsel for Defendants-Appellees
- 596. LifeMap Assurance Company, Subsidiary of Defendants-Appellees
- 597. Life Secure Insurance Company Holdings, Affiliate of Defendants-
Appellees
- 598. Lifetime Healthcare, Inc., Defendant-Appellee
- 599. Lightfoot Franklin & White LL, Counsel for Defendants-Appellees
- 600. Liskow & Lewis, Counsel for Plaintiffs-Appellees

- 601. Lite Depalma Greenberg & Afanador, LLC, Counsel for Plaintiffs-Appellees
- 602. Little, Jonathan Charles - Counsel for Plaintiffs-Appellees
- 603. Lloyd's of London, Insurer of Defendants-Appellees
- 604. Lockard & Williams Insurance Services, Inc., Affiliate of Defendants- Appellees
- 605. Lockridge Grindal Nauen P.L.L.P, Counsel for Plaintiffs-Appellees
- 606. London ACE, Insurer of Defendants-Appellees
- 607. Lott, Casey Langston, Counsel for Plaintiffs-Appellees
- 608. Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, Defendant-Appellee
- 609. Lovell & Nalley, Counsel for Plaintiffs-Appellees
- 610. Lowrey, IV, Frank M., Counsel for Interested Party-Appellant
- 611. Lydian, LLC, Affiliate of Defendants-Appellees
- 612. Lytle, Joann, Counsel for Defendants-Appellees
- 613. Macrae, Amy, Plaintiff-Appellee
- 614. Maier, Jeny M., Counsel for Defendants-Appellees
- 615. Malatesta, III, John Thomas A., Counsel for Defendants-Appellees
- 616. Malone, J. Michael, Counsel for Plaintiffs-Appellees
- 617. Mandel and Mandel, LLP, Counsel for Plaintiffs-Appellees

- 618. Mann, Jonathan S., Counsel for Plaintiffs-Appellees
- 619. Marino Law, PLLC, Counsel for Plaintiffs-Appellees
- 620. Mark W. Wasvery, PC, Counsel for Defendants-Appellees
- 621. Marshall III, Charles F., Counsel for Defendants-Appellees
- 622. Martin, John D., Counsel for Defendants-Appellees
- 623. Martin, Scott Allen, Counsel for Plaintiffs-Appellees
- 624. Martinez, Jr., Esq., Elio F., Counsel for Defendants-Appellees
- 625. Massachusetts Benefit Administrators, LLC, Affiliate of
Defendants- Appellees
- 626. Mathias, John, Counsel for Defendants-Appellees
- 627. Matthew Thornton Health Plan, Inc., Subsidiary of Defendants-
Appellees
- 628. Maynard Cooper & Gale PC, Counsel for Defendants-Appellees
- 629. McCafee & Taft, P.C., Counsel for Interested Party-Appellant
- 630. McCallum, Methvin & Terrell, PC, Counsel for Plaintiffs-Appellees
- 631. McCallum, Phillip W., Counsel for Plaintiffs-Appellees
- 632. McCarter & English, LLP, Counsel for Defendants-Appellees
- 633. McDevitt, Larry, Counsel for Plaintiffs-Appellees
- 634. McDonald, Yawanna N., Counsel for Defendants-Appellees
- 635. McDonough, James C., Counsel for Plaintiffs-Appellees

- 636. McDowell, M. Patrick, Counsel for Defendants-Appellees
- 637. McGartland & Borchardt LLP, Counsel for Plaintiffs-Appellees
- 638. McGartland, Michael, Counsel for Plaintiffs-Appellees
- 639. McGartland Law Firm, PLLC, Counsel for Plaintiffs-Appellees
- 640. McGill, Brian, Plaintiff-Appellee
- 641. McGill, Rochelle, Plaintiff-Appellee
- 642. McKane, Mark E., Counsel for Defendants-Appellees
- 643. McKay Cauthen Settana and Stubley, Counsel for Plaintiffs-
Appellees
- 644. McLean, Ronald H., Counsel for Defendants-Appellees
- 645. McLeod, Aaron G., Counsel for Defendants-Appellees
- 646. MCS Holdings, Inc., Affiliate of Defendants-Appellees
- 647. Means Gillis Law, LLC, Counsel for Plaintiffs-Appellees
- 648. Medical Helpline, LLC, Affiliate of Defendants-Appellees
- 649. Medrisk Actuarial Services, LLC, Affiliate of Defendants-Appellees
- 650. Meierhenry Sargent LLP, Counsel for Plaintiffs-Appellees
- 651. Menge, Mary G., Counsel for Defendants-Appellees
- 652. Meridian Resources Company, LLC, Subsidiary of Defendants-
Appellees
- 653. Meriwether, Ellen, Counsel for Plaintiffs-Appellees

- 654. Methvin, Terrell, Yancy, Stephens & Miller, P.C., Counsel for
Plaintiffs-Appellees
- 655. Methvin, Jr., Robert G., Counsel for Plaintiffs-Appellees
- 656. Meyers, D. Kent, Counsel for Defendants-Appellees
- 657. Midwest Benefit Consultants, Inc., Defendant-Appellee
- 658. Mills, Linda, Plaintiff-Appellee
- 659. Montis, Inc., Plaintiff-Appellee
- 660. Morris, King & Hodge, Counsel for Plaintiffs-Appellees
- 661. Morris, Scott A., Plaintiff-Appellee
- 662. Mosaic Group Services, LLC, Affiliate of Defendants-Appellees
- 663. Moylan, Daniel Patrick, Counsel for Plaintiffs-Appellees
- 664. Murphy & Murphy LLC, Counsel for Plaintiffs-Appellees
- 665. Murphy, Erin E., Counsel for Defendants-Appellees
- 666. Murphy, Michael L., Counsel for Plaintiffs-Appellees
- 667. My Care Alabama, Inc., Affiliate of Defendants-Appellees
- 668. Nalley, John Doyle, Counsel for Plaintiffs-Appellees
- 669. Naranjo, Michael A., Counsel for Defendants-Appellees
- 670. Nast, Dianne M., Counsel for Plaintiffs-Appellees
- 671. NastLaw LLC, Counsel for Plaintiffs-Appellees
- 672. NDBH Holding Company, LLC, Affiliate of Defendants-Appellees

- 673. Nelson Mullins Riley & Scarborough LLP, Counsel for Defendants-Appellees
- 674. Nelson, Christopher, Counsel for Plaintiffs-Appellees
- 675. Netting, Irma L., Counsel for Plaintiffs-Appellees
- 676. New Directions Behavioral Health, LLC, Affiliate of Defendants-Appellees
- 677. Niagara Life and Health Insurance Company, Affiliate of Defendants- Appellees
- 678. Nix, Jess R., Counsel for Defendants-Appellees
- 679. Nix, Richard D., Counsel for Interested Party-Appellant
- 680. NobleHealth, Inc., Affiliate of Defendants-Appellees
- 681. Nordin, Daniel J., Counsel for Plaintiffs-Appellees
- 682. Noridian Mutual Insurance Company, d/b/a Blue Cross Blue Shield of North Dakota, Defendant-Appellee
- 683. Norman, Brian K., Counsel for Defendants-Appellees
- 684. Nyemaster Goode PC, Counsel for Defendants-Appellees
- 685. O'Brien, Charles A., Counsel for Defendants-Appellees
- 686. O'Connell, Sean T., Counsel for Plaintiffs-Appellees
- 687. Ogletree Deakins Nash Smoak & Stewart PC, Counsel for Defendants- Appellees

- 688. O'Melveny & Myers LLP, Counsel for Defendants-Appellees
- 689. OneBeacon Insurance Group (including Atlantic Specialty Insurance Company and Homeland Insurance Company), Insurer of Defendants- Appellees
- 690. Onlife Health, Inc., Affiliate of Defendants-Appellees
- 691. Optimum Healthcare, Inc., Subsidiary of Defendants-Appellees
- 692. PGBA, LLC, Affiliate of Defendants-Appellees
- 693. Pacella, Mario Anthony, Counsel for Plaintiffs-Appellees
- 694. Page, Edwin Allen, Counsel for Interested Party-Appellant
- 695. Palmer, Tim A., Counsel for Defendants-Appellees
- 696. Palmetto GBA, LLC, Affiliate of Defendants-Appellees
- 697. Paul Weiss Rifkind Wharton – Counsel for Plaintiffs-Appellees
- 698. Payne, Joshua K., Counsel for Defendants-Appellees
- 699. Payton, Gwendolyn C., Counsel for Defendants-Appellees
- 700. PCS, LLC, Affiliate of Defendants-Appellees
- 701. Pearce, Bevill, Leesburg, Moore, P.C., Plaintiff-Appellee
- 702. Pendley, Baudin & Coffin LLP, Counsel for Plaintiffs-Appellees
- 703. Pendley, Patrick W., Counsel for Plaintiffs-Appellees
- 704. Penney, Brant, Counsel for Plaintiffs-Appellees
- 705. Pennington, Michael R., Counsel for Interested Party-Appellant

- 706. Perlman, Alan J., Counsel for Defendants-Appellees
- 707. Pete Moore Chevrolet, Inc., Plaintiff-Appellee
- 708. Peterson, Rebecca, Counsel for Plaintiffs-Appellees
- 709. Pettus Plumbing & Piping, Inc, Plaintiff-Appellee
- 710. Pham, Allison N., Counsel for Defendants-Appellees
- 711. Phillips Lytle LLP, Counsel for Defendants-Appellees
- 712. Physicians' Service, d/b/a Blue Shield of California, Defendant-Appellee
- 713. Piercy, Deborah, Plaintiff-Appellee
- 714. Pioneer Farm Equipment, Inc., Plaintiff-Appellee
- 715. Pittman Dutton Hellums, Bradley and Mann, P.C., Counsel for Plaintiffs-Appellees
- 716. Planned Administrators, Inc., Affiliate of Defendants-Appellees
- 717. Pollack-Avery, Elizabeth, Counsel for Plaintiffs-Appellees
- 718. Preferred Care Services, Inc., Affiliate of Defendants-Appellees
- 719. Premara Blue Cross of Washington, Defendant-Appellee
- 720. Premara, d/b/a Premara Blue Cross Blue Shield of Alaska, Defendant- Appellee
- 721. Premera Blue Cross, d/b/a Premera Blue Cross Blue Shield of Alaska, Defendant-Appellee

- 722. Priester, James L., Counsel for Defendants-Appellees
- 723. Prime Therapeutics, LLC, Affiliate of Defendants-Appellees
- 724. Proctor, Hon. R. David (N.D. Ala.)
- 725. Provosty & Gankendorff, LLC, Counsel for Plaintiffs-Appellees
- 726. Putnam, Hon. T. Michael (N.D. Ala.)
- 727. Quinlan, Patrick J., Counsel for Plaintiffs-Appellees
- 728. Quinn, Connor, Weaver, Davies & Ruoco LLP, Counsel for
Plaintiffs- Appellees
- 729. Ragsdale, Barry A., Plaintiffs' Liaison Counsel
- 730. Redgrave, Jonathan M., Counsel for Defendants-Appellees
- 731. Redgrave, LLP, Counsel for Defendants-Appellees
- 732. Redgrave, Victoria A., Counsel for Defendants-Appellees
- 733. Reed Smith LLP, Counsel for Defendants-Appellees
- 734. Reeves, Harold S., Counsel for Plaintiffs-Appellees
- 735. Regence BlueCross BlueShield of Oregon, Defendant-Appellee
- 736. Regence BlueCross BlueShield of Utah, Defendant-Appellee
- 737. Regence BlueShield, Defendant-Appellee
- 738. Regence BlueShield of Idaho, Inc., Defendant-Appellee
- 739. Regence Insurance Holding Corporation, Subsidiary of Defendants-
Appellees

- 740. Reichard & Escalera, LLC, Counsel for Defendants-Appellees
- 741. Reinhardt, Wendorf & Blanchfield, Counsel for Plaintiffs-Appellees
- 742. Reis, John, Counsel for Defendants-Appellees
- 743. Reuben, Mindee, Counsel for Plaintiffs-Appellees
- 744. Resolution Health, Inc., Subsidiary of Defendants-Appellees
- 745. Rheume, Jr., Thomas J., Counsel for Defendants-Appellees
- 746. Rhodes IV, C. Harker, Counsel for Defendants-Appellees
- 747. Richie, John Thomas, Counsel for Interested Party-Appellant
- 748. Rico, Gustavo A. Pabón, Counsel for Defendants-Appellees
- 749. Riebel, Karen Hanson, Counsel for Plaintiffs-Appellees
- 750. RightChoice Managed Care, Inc., Defendant-Appellee
- 751. Riley & Jackson, PC, Counsel for Defendants-Appellees
- 752. Riley, Jr., Robert R., Counsel for Defendants-Appellees
- 753. Riverbend Govt. Benefits Administrator, Inc., Affiliate of
Defendants- Appellees
- 754. RiverTrust Solutions, Inc., Affiliate of Defendants-Appellees
- 755. RLI/RSUI, Insurer of Defendants-Appellees
- 756. Roach, Benjamin Patrick, Counsel for Defendants-Appellees
- 757. Robertson, John Robert, Counsel for Defendants-Appellees
- 758. Robinovitch, Hart L., Counsel for Plaintiffs-Appellees

- 759. Robinson, Kenneth J., Counsel for Plaintiffs-Appellees
- 760. Rockforte, Nicholas R., Counsel for Plaintiffs-Appellees
- 761. Rocky Mountain Hospital & Medical Service Inc., d/b/a Anthem
Blue Cross Blue Shield of Colorado, Defendant-Appellee
- 762. Rocky Mountain Hospital & Medical Service Inc., d/b/a Anthem
Blue Cross Blue Shield of Nevada, Defendant-Appellee
- 763. Rodanast, P.C., Counsel for Plaintiffs-Appellees
- 764. Rodríguez, Rafael Escalera, Counsel for Defendants-Appellees
- 765. Rolison Trucking Co., LLC, Plaintiff-Appellee
- 766. Roman, Tracy A., Counsel for Defendants-Appellees
- 767. Ross, April N., Counsel for Defendants-Appellees
- 768. Rouco, Richard, Counsel for Plaintiffs-Appellees
- 769. Rowe, Stephen A., Counsel for Defendants-Appellees
- 770. Rutenberg, Alan D., Counsel for Defendants-Appellees
- 771. Ruzic, Emily Myers, Counsel for Interested Party-Appellant
- 772. Rx Concepts, Ltd. Co., Affiliate of Defendants-Appellees
- 773. Saccoccio & Lopez, Plaintiff-Appellee
- 774. Sadler Electric, Plaintiff-Appellee
- 775. Saeed & Little, LLP, Counsel for Plaintiffs-Appellees
- 776. Salomon, Anne, Counsel for Defendants-Appellees

- 777. Sansbury, Michael T., Counsel for Defendants-Appellees
- 778. Sargent, Clint, Counsel for Plaintiffs-Appellees
- 779. Saxon, John, Counsel for Plaintiffs-Appellees
- 780. Scheller, Kathryn, Plaintiff-Appellee
- 781. Schmidt, Jr., John G., Counsel for Defendants-Appellees
- 782. Schneider, Sydney L., Counsel for Defendants-Appellees
- 783. Schwiep, Paul J., Counsel for Defendants-Appellees
- 784. Scott & Cain, Counsel for Plaintiffs-Appellees
- 785. Scott Jr., Thomas S., Counsel for Plaintiffs-Appellees
- 786. Scott, Lee McArthur, Counsel for Plaintiffs-Appellees
- 787. SecurityCare of Tennessee, Inc., Affiliate of Defendants-Appellees
- 788. Self Insured Plans, LLC, Affiliate of Defendants-Appellees
- 789. Serkland Law Firm, Counsel for Defendants-Appellees
- 790. Shaheen & Gordon, P.A., Counsel for Plaintiffs-Appellees
- 791. Shamoun & Norman, LLP, Counsel for Defendants-Appellees
- 792. Shared Health, Inc., Affiliate of Defendants-Appellees
- 793. Sharo Law, LLP, Counsel for Plaintiffs-Appellees
- 794. Sharp Law, LLP
- 795. Sharp, Marla S., Plaintiff-Appellee
- 796. Shaw, Adam R., Counsel for Plaintiffs-Appellees

- 797. Shearman & Sterling LLP, Counsel for Defendants-Appellees
- 798. Sheppard, Mullin, Richter & Hampton LLP, Counsel for Insurer
- 799. Sheridan, Judy, Plaintiff-Appellee
- 800. Simply Healthcare Plans, Inc., Subsidiary of Defendants-Appellees
- 801. Sirocco, Inc., Plaintiff-Appellee
- 802. Slate, Pamela B., Counsel for Defendants-Appellees
- 803. Small, Daniel, Counsel for Plaintiffs-Appellees
- 804. Smith, Scott Burnett, Counsel for Interested Party-Appellant
- 805. Smith, Cyril V., Counsel for Plaintiffs-Appellees
- 806. Snyder, Eric B., Counsel for Plaintiffs-Appellees
- 807. Socios Mayores en Salud Holdings, Inc., d/b/a Triple-S Advantage,
Affiliate of Defendants-Appellees
- 808. Sommers Schwartz PC, Counsel for Plaintiffs-Appellees
- 809. Sooy, Kathleen Taylor, Counsel for Defendants-Appellees
- 810. Sompo International, Insurer of Defendants-Appellees
- 811. Southeast Services, Inc., Subsidiary of Defendants-Appellees
- 812. Southern Diversified Business Services, Inc., Affiliate of
Defendants-Appellees
- 813. Southern Health Plan, Inc., Affiliate of Defendants-Appellees
- 814. Spenser, Mark D., Counsel for Interested Party-Appellant

- 815. Spotswood Sansom & Sansbury LLC, Counsel for Defendants-Appellees
- 816. Spotswood, Robert K., Counsel for Defendants-Appellees
- 817. Stark, Michael E., Plaintiff-Appellee
- 818. Stecker, Brett, Counsel for Plaintiffs-Appellees
- 819. Stenerson, Todd, Counsel for Defendants-Appellees
- 820. Stetson, Catherine E., Counsel for Defendants-Appellees
- 821. Stokes, Tammy, Counsel for Plaintiffs-Appellees
- 822. Stone & Magnanini LLP, Counsel for Plaintiffs-Appellees
- 823. Stone Law Firm, LLC, Counsel for Plaintiffs-Appellees
- 824. Stone, Andrew M., Counsel for Plaintiffs-Appellees
- 825. Stone, David, Counsel for Plaintiffs-Appellees
- 826. Stoops, Kevin J., Counsel for Plaintiffs-Appellees
- 827. Strauss & Boies LLP, Counsel for Plaintiffs-Appellees
- 828. Strom Law Firm, Counsel for Plaintiffs-Appellees
- 829. Strutt, Jennifer, Counsel for Defendants-Appellees
- 830. Sudekum, Michael J., Counsel for Plaintiffs-Appellees
- 831. Swank, Ami, Counsel for Plaintiffs-Appellees
- 832. Swartz, Eric B., Counsel for Plaintiffs-Appellees
- 833. Sweeris, Charles L., Counsel for Defendants-Appellees

- 834. The Sweet Law Firm, PC Counsel for Plaintiffs-Appellees
- 835. Sweet, Benjamin, Counsel for Plaintiffs-Appellees
- 836. Taylor, Jr., Daniel R., Counsel for Defendants-Appellees
- 837. Templeton, Quentin, Counsel for Plaintiffs-Appellees
- 838. Tennessee Health Foundation, Inc., Affiliate of Defendants-Appellees
- 839. Terrell, James M., Counsel for Plaintiffs-Appellees
- 840. Tessellate Holdings, LLC, Affiliate of Defendants-Appellees
- 841. Tessier, Kevin, Counsel for Defendants-Appellees
- 842. The Caring Foundation, Affiliate of Defendants-Appellees
- 843. The Cowan Law Firm, Counsel for Plaintiffs-Appellees
- 844. The Dampier Law Firm PC, Counsel for Plaintiffs-Appellees
- 845. The Van Winkle Law Firm, Counsel for Plaintiffs-Appellees
- 846. The Weiser Law Firm, P.C., Counsel for Plaintiffs-Appellees
- 847. Thomas Cooper & Co., Inc., Affiliate of Defendants-Appellees
- 848. Thomas, Nancy, Plaintiff-Appellee
- 849. Thompson, Charles M., Counsel for Plaintiffs-Appellees
- 850. Thompson, Jason, Counsel for Plaintiffs-Appellees
- 851. Thompson, John G., Plaintiff-Appellee
- 852. Tomazzoli, Lisa, Plaintiff-Appellee

- 853. Topographic, Inc., Interested Party-Appellant
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- 858. The Travelers Companies, Inc. (TRV), Insurer of Defendants-
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- 868. Turner, Ashley, Counsel for Defendants-Appellees
- 869. Tyner, Star Mishkel, Counsel for Plaintiffs-Appellees
- 870. UNICARE Health Plan of West Virginia, Inc., Subsidiary of
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- 871. UniCare Life & Health Insurance Company, Subsidiary of
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- 877. Utsey, Jeff, Counsel for Plaintiffs-Appellees
- 878. Utsey Law Firm, Counsel for Plaintiff-Appellee
- 879. Van Winkle Law Firm, Counsel for Plaintiffs-Appellees
- 880. Van Zant, Jennifer K., Counsel for Defendants-Appellees
- 881. Vardas, Angel (Foster), Plaintiff-Appellee

- 882. Varney, Christine, Counsel for Defendants-Appellees
- 883. Vaughan Pools, Inc., Plaintiff-Appellee
- 884. Vermont Health Plan LLC, Affiliate of Defendants-Appellees
- 885. VHP Insurance Solutions, LLC, Affiliate of Defendants-Appellees
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- 889. Voegele, Jonathan R., Counsel for Plaintiffs-Appellees
- 890. Volunteer State Health Plan, Inc., Affiliate of Defendants-Appellees
- 891. Wallace, Jordan, Ratliff & Brandt, LLC, Counsel for Defendants-Appellees
- 892. Walsh, Stephen A., Counsel for Defendants-Appellees
- 893. Wasvary, Mark K., Counsel for Plaintiffs-Appellees
- 894. Watkins, Charles R, Counsel for Plaintiffs-Appellees
- 895. Watson, McKinney, LLP, Counsel for Plaintiffs-Appellees
- 896. Watts, Brett, Plaintiff-Appellee
- 897. Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Counsel for Defendants-Appellees
- 898. Weiser, Robert, Counsel for Plaintiffs-Appellees
- 899. Weiser Law Firm, P.C., Counsel for Plaintiffs-Appellees

- 900. Wellmark Blue Cross and Blue Shield of Iowa, Defendant-Appellee
- 901. Wellmark Blue Cross and Blue Shield of South Dakota, Defendant-Appellee
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- 910. WellPoint California Services, Inc., Subsidiary of Defendants-Appellees
- 911. WellPoint Dental Services, Inc., Subsidiary of Defendants-Appellees

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- 913. WellPoint, Inc., Defendant-Appellee
- 914. WellPoint Information Technology Services, Inc., Subsidiary of
Defendants-Appellees
- 915. West, Kimberly R., Counsel for Defendants-Appellees
- 916. Whitfield Bryson & Mason, LLP, Counsel for Plaintiffs-Appellees
- 917. Wilkerson, David M., Counsel for Plaintiffs-Appellees
- 918. Williams, Jennifer, Counsel for Plaintiffs-Appellees
- 919. Williams, Jr., James T., Counsel for Defendants-Appellees
- 920. Wisconsin Collaborative Insurance Company, Subsidiary of
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- 921. Witt, P.C., Helen E., Counsel for Defendants-Appellees
- 922. Wolfla, Paul A., Counsel for Defendants-Appellees
- 923. Woodward Straits Insurance Company, Affiliate of Defendants-
Appellees
- 924. Wright, Greg, Counsel for Plaintiffs-Appellees
- 925. Wylie, John R., Counsel for Plaintiffs-Appellees
- 926. XL Group Ltd., Insurer of Defendants-Appellees
- 927. XL Catlin, Insurer of Defendants-Appellees
- 928. Yancey, Perry Michael, Counsel for Plaintiffs-Appellees

- 929. Yinger, Emily M., Counsel for Defendants-Appellees
- 930. Young, Lance C., Counsel for Plaintiffs-Appellees
- 931. Yuhl Carr, LLP Counsel for Plaintiffs-Appellees
- 932. Zeiger, P.C., Jeffrey J., Counsel for Defendants-Appellees
- 933. Zimmerman Reed, PLLP, Counsel for Plaintiffs-Appellees
- 934. Zimmerman, Genevieve M., Counsel for Plaintiffs-Appellees
- 935. Zolner, Erica B., Counsel for Defendants-Appellees
- 936. Zott, P.C., David J., Counsel for Defendants-Appellees
- 937. Zuckerman Spaeder LLP, Counsel for Plaintiffs-Appellees
- 938. Zuger, Peter W., Counsel for Defendants-Appellees
- 939. Zurich Insurance Group Ltd., Insurer of Defendants-Appellees
- 940. The Oklahoma Insurance Department, *Amici Curiae*
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INTEREST OF *AMICUS CURIAE* AND OVERVIEW

The District Court has stated that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.”¹ As written, this statement is not accurate and the *amici* support reversal as to this statement by the District Court. In our experience as insurance industry regulators, self-funded plans frequently purchase stop-loss insurance. The Oklahoma Insurance Department, Arkansas Insurance Department, California Department of Insurance, Georgia Office of Insurance and Safety Fire Commissioner, Idaho Department of Insurance, Maine Bureau of Insurance, the Nevada Division of Insurance, Vermont Department of Financial Regulation, Washington State Office of the Insurance Commissioner, and Wisconsin Office of the Commissioner of Insurance (collectively the “Insurance Commissioners” and pursuant to their authority under McCarran-Ferguson Act, 15 U.S.C. §§ 1011, *et seq.*) have concerns that the District Court’s erroneous description of self-funded plans could be misused to cast doubt on the authority to regulate stop-loss insurance products, with corresponding negative implications for consumers. Therefore, this brief is designed to further inform this Court and request caution when issuing its decision.

¹ Final Order & Judgment Granting Approval of Subscriber Class Action Settlement & Appointing Settlement Adm’r at 61, *In re: Blue Cross Blue Shield*, No. 2:13-cv-20000-RDP (N.D. Ala. Aug. 9, 2022), ECF No. 2931 (“Final Order”).

STATEMENT OF THE ISSUE

1. Whether the District Court erred when stating that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.”

SUMMARY OF THE ARGUMENT

The District Court erroneously stated that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.” This statement is incorrect for several reasons and should be reversed. Self-funded plans frequently purchase stop-loss insurance to limit their exposure. Stop-loss insurance is not reinsurance. The Seventh Circuit agreed with the National Association of Insurance Commissioners (“NAIC”) in *Edstrom Industries, Inc. v. Companion Life Ins. Co.*² when reversing the lower court’s decision and finding that stop-loss coverage is not reinsurance but insurance. Additionally, each of the circuit courts of appeals has viewed stop-loss coverage as insurance.

The District Court erred when it assumed that self-funding or buying insurance is an either/or choice. Self-funded plans often have complex structures, and it is common for self-funded plans to buy administrative services *and* stop-loss insurance from the Blues. Because of this complex structure, the Insurance

² 516 F.3d 546 (7th Cir. 2008) (citations omitted).

Commissioners believe their regulatory experience will be of help in informing this Court as it works to determine the proper outcome and protect consumers.

The District Court’s statement has the potential for significantly impacting the regulation of stop-loss insurance. Importantly, state laws regulating stop-loss insurance are not preempted by federal law. In fact, the NAIC has a stop-loss insurance model law, and many states have enacted statutes regulating stop-loss insurance. The loss of regulatory authority for states over stop-loss insurance would likely result in an increase in adverse selection, insufficient regulatory oversight, and loss of priority for the insureds during liquidation. Each alone is a significant concern for consumer protection. Therefore, the Insurance Commissioners request this Court reverse the District Court’s statement that the self-funded plans did not buy insurance from the Blues.

ARGUMENT

I. What is Stop-Loss Insurance?

Stop-loss insurance is “coverage purchased by employers in order to limit their exposure.”³ It is also referred to as “excess” insurance. This has sometimes been mistakenly viewed as reinsurance. But stop-loss insurance is *not* reinsurance⁴

³ HARVEY W. RUBIN, DICTIONARY OF INSURANCE TERMS 493 (5th ed. 2008).

⁴ See KENNETH THOMPSON, REINSURANCE, 7–8 (4th ed. 1966).

because the policy is between the employer plan and an insurer—not an insurer and insurer.⁵ As the Seventh Circuit explained in *Edstrom Industries, Inc. v. Companion Life Ins. Co.*:⁶

The magistrate judge’s ruling that stop-loss insurance is reinsurance under Wisconsin law is perhaps understandable, because “unlike traditional group-health insurance, stop-loss insurance is akin to reinsurance in that it does not provide coverage directly to plan members or beneficiaries.” But kinship is not enough.... Stop-loss insurance is an insurance policy for losses that the insured self-insures up to the limit of the deductible. Reinsurance contracts are (largely) unregulated because they are contracts between insurance companies.... Edstrom [the employer] is not an insurance company, but an insured.

Stop-loss coverage does not pay out immediately but only when certain triggers occur. In its purest form, stop-loss insurance has two distinct triggers: “specific stop-loss” and “aggregate stop-loss.”⁷ A specific stop-loss policy provides coverage when an *individual* claim reaches a threshold specified in the contract.⁸ But

⁵ See Nat. Ass’n of Ins. Comm’rs’ Brief of Amicus Curiae in Support of Appellants and Supporting Reversal of the Judgment Below, *Edstrom Industries, Inc. v. Companion Life Ins. Co.*, 516 F.3d 546 (2008) (No. 07-2165) (“NAIC Edstrom Brief”); see also *id.* at 5 (analyzing the relationship between the stop-loss insurer and employee).

⁶ *Edstrom Industries, Inc.*, *supra* note 2, at 550–51 (citations omitted).

⁷ See NAT. ASS’N OF INS. COMM’RS, WHITE PAPER: STOP LOSS INSURANCE, SELF-FUNDING AND THE ACA 2–3 (2015) (“NAIC White Paper”).

⁸ RUBIN, *supra* note 3; 1A STEVEN PITT ET AL., COUCH ON INS. (3d ed. 2022). See generally Edward Albuero Morrissey, *Deem and Deemer: ERISA Preemption Under the Deemer Clause as Applied to Employer Health Care Plans With Stop-Loss Insurance*, 23 J. LEGIS. 307 (1997); JOHN F. WAGNER, Annotation, *Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 U.S.C.A. § § 1001 et seq.), for state laws regulating insurance, banking, or*

coverage under an aggregate stop-loss policy does not kick in until the *total* amount of claims payments reach a specific amount (e.g., 125% of the annual estimated group health claims cost).⁹ The threshold value for each type of trigger is often referred to as an “attachment point.”¹⁰

The purpose of a stop-loss policy is to “protect[] a self-funded plan from extremely large losses.”¹¹ Self-funded plans face these large losses due to shock claims, high utilization claims, and timing risk.¹² Shock claims are claims with a “high dollar [amount] but low frequency.”¹³ High utilization claims are claims with a “low dollar [amount] but unusually high frequency.”¹⁴ Timing risk is the risk incurred by the plans because they “need[] to pay claims when they are incurred”—instead of a fixed premium every month as fully-insured employers pay.¹⁵ An employer plan can “transfer some of its risk of loss to a stop loss insurer by purchasing a stop loss insurance policy,”¹⁶ which will reimburse the plan for claims

securities (29 U.S.C.A. § 1144(b)(2)), 87 A.L.R. Fed. 797 (originally published in 1988) (discussing effect of stop-loss coverage on ERISA preemption). *See also* NAIC White Paper, *supra* note 7, at 2–3.

⁹ *Id.*; PITT, *supra* note 8.

¹⁰ NAIC White Paper, *supra* note 7, at 2–4 & 6.

¹¹ PITT, *supra* note 8.

¹² *See* NAIC White Paper, *supra* note 7, at 2–3.

¹³ NAIC White Paper, *supra* note 7, at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2.

paid out when the coverage is triggered. However, excessive risk transfer is often prohibited.¹⁷

II. What is a Self-Funded Plan?

The District Court simplistically declared that “[t]hose who are Self-Funded are just that,” but it is not so simple. Broadly speaking,¹⁸ there are two ways employers provide health coverage to employees and their dependents. In a “fully-insured plan,” the employer typically buys a group health insurance policy from a state-licensed and state-regulated insurance company such as one of the “Blues” (the defendant member companies of the Blue Cross and Blue Shield Association (BCBSA)), and the insurance company is then unconditionally responsible to pay all valid claims from its own funds. By contrast, in a “self-funded plan,” it is the employer that takes on the responsibility to ensure that claims are paid, and the employer’s funds that are at risk.

¹⁷ See *id.* at 7. The reason is to prevent regulatory arbitrage when the plan operates as a functional equivalent of a fully-insured plan.

¹⁸ In practice, there is a wide variety of ways either type of plan can be structured, including but not limited to multiple-employer plans, which can be either fully-insured or self-funded, and mechanisms such as stop-loss insurance that share the risk between the employer and an insurance company. The basic distinction between a fully-insured plan and a self-funded plan is whether the entity that is directly responsible to the employee for the payment of claims is an insurance company or the employer itself.

To complicate matters, however, insurance companies are involved in both types of business. In addition to group health insurance, many insurance companies, including the Blues, sell employers what the District Court refers to as “ASO products.”¹⁹ “ASO” is an abbreviation for “administrative services only.” It is used to distinguish an insurance company’s group health insurance business from its “third-party administrator” business.²⁰ ASO plans often have the look and feel of insurance policies, with the insurance company’s usual branding accompanied by a disclaimer that the company is acting as the plan’s “administrator.” The insurance company is paid a fee by the employer for responsibilities that include preparing the coverage documents and adjudicating and paying claims. Enrollees and health care providers who deal with the insurer are often unaware that the company is not actually providing insurance, but rather administering a fund that is provided by the employer, which is responsible for maintaining adequate funding as needed rather than paying a fixed monthly premium.

The fallacy in the District Court’s analysis is a misunderstanding of what the “Only” in “Administrative Services Only” means. An insurer’s ASO services are not insurance, but most self-funded employers buy both administrative services *and*

¹⁹ Final Order, *supra* note 1, at 60.

stop-loss insurance.²¹ If they buy their administrative services from an insurance company, it is common for them to buy their stop-loss insurance from the same company.

And this includes the Blues. Each Blue company is a “health insurance issuer” within the meaning of the Health Insurance Portability and Accountability Act (“HIPAA”) and the Affordable Care Act (“ACA”), but that does not mean “health insurance coverage” is the only insurance coverage they issue.²² Currently, many Blue Cross Blue Shield member companies have a significant presence in the stop-loss market.²³ In other words, they do sell insurance to self-funded plans, although it is not health insurance.

Therefore, the statement that self-funded plans “did not buy insurance from the Blues” is incorrect. The error should be corrected to avoid language that could

²¹ Many self-funded plans also purchase pharmacy benefit management services, dental products, vision products, and other ancillary services.

²² See 42 U.S.C. § 300gg-91(b)(1) & (2). Another potential source of confusion is the District Court’s reference to employer groups that are “insured by any health insurance plan” that is a member of the BCBSA. Final Order, *supra* note 1, at 61. For historical reasons, the Blues refer to themselves as “plans”; however, the ACA refers to the Blues as “issuers” and uses the term “plans” to refer to the health insurance coverage they issue. 42 U.S.C. § 18021(b)(1).

²³ MyHealthGuide Newsletter, MyHealthGuide.com https://www.myhealthguide.com/news.htm#Medical_Stop_Loss (last visited Nov. 28, 2022) (listing Blue Cross Blue Shield member companies as two of the top 20 stop-loss providers based on 2021 annual stop-loss premiums).

be misconstrued as implying that stop-loss insurance is not fully subject to state regulatory authority.

III. Stop-Loss Policies are Insurance

Stop-loss policies have been consistently held to be insurance by the federal courts.²⁴ This is accurate because a stop-loss policy takes the risk from the employer plan and transfers it to the insurer by paying money to the employer plan when

²⁴ See *Indep. Serv. Corp. v. Tousant*, 149 F.2d 204 (1st Cir. 1945) (explaining how stop-loss insurance works); *Travelers Ins. Co. v. Cuomo*, 14 F.3d 708 (2nd Cir. 1993) (explaining stop-loss insurance use by self-insurers and generally determining the validity of New York regulation on specific aspects of stop-loss insurance under ERISA); *Bill Gray Enter's, Inc. Emp. Health & Welfare Plan v. Gourley*, 248 F.3d 206 (3rd Cir. 2001) (recognizing that plans purchase stop-loss insurance); *Am. Med. Sec., Inc. v. Bartlett*, 111 F.3d 358, 365 (4th Cir. 1997) (explaining the use of stop-loss insurance by self-funded plans and stating: “This is not to say that Maryland may not regulate stop-loss insurance policies. Such regulation is *clearly* reserved to the states.”) (emphasis added); *Bank of La. v. Aetna U.S. Healthcare Inc.*, 468 F.3d 237 (5th Cir. 2006) (explaining the use of stop-loss insurance); *Seaway Food Town, Inc. v. Med. Mut. of Ohio*, 347 F.3d 610, 613 (6th Cir. 2003) (stating that Blue Cross and Blue Shield Mutual of Ohio collected stop-loss premiums and explaining what stop-loss insurance was); *Edstrom Industries, Inc.*, *supra* note 2, at 551 (concluding that “[s]top-loss insurance is an insurance policy for losses that the insured self-insures up to the limit of the deductible” and that stop-loss insurance is not reinsurance); *Leech Lake Tribal Counsel v. Wash. Nat. Ins. Co.*, 227 F.3d 1054, 1057 (8th Cir. 2000) (applying insurance case law to stop-loss insurance dispute); *United Food & Commercial Workers Tr. v. Pacyga*, 801 F.2d 1157, 653 (9th Cir. 1986); *Columbian Fin. Corp. v. Bus. Men's Assur. Co. of Am.*, 956 F.2d 277 (10th Cir. 1992) (analyzing a stop-loss policy); and *Glass v. United of Omaha Life Ins. Co.*, 33 F.3d 1341, 1344 (11th Cir. 1994) (referencing stop-loss policy as insurance and noting the policy reimbursed for payments over \$100,000).

certain triggers occur.²⁵ The key differences between a stop-loss insurance product and a traditional insurance product are the timing and the identity of the policy beneficiary. A stop-loss policy does not pay out until a certain dollar amount is reached or a certain number of claims are incurred, and stop-loss claims are payable to the self-funded plan, not to health care providers or covered employees.²⁶

IV. State Regulation of Stop-Loss Insurance

Prior to the Employee Retirement Income Security Act of 1974²⁷ (“ERISA”), the states regulated health insurance.²⁸ After ERISA, most self-funded plans are no longer regulated by the states.²⁹ However, “ERISA does not preempt state laws that regulate insurers that sell policies to employer plans, so long as the law is specifically

²⁵ NAIC White Paper, *supra* note 7, at 2. *See also* ALA. CODE § 27-1-2(1) (1975) (defining insurance as a “contract whereby one undertakes to indemnify another or pay or provide a specified amount or benefit upon determinable contingencies.”); FLA. STAT. § 624.02 (1959) (defining insurance as “a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.”); GA. CODE ANN. § 33-1-2(4) (2019) (defining insurance as “a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies.”).

²⁶ NAIC White Paper, *supra* note 7, at 2.

²⁷ 29 U.S.C. §§ 1001, *et seq.*

²⁸ ERISA: BARRIER TO HEALTH CARE CONSUMERS’ RIGHTS, 3 Proc. of the Nat’l Ass’n of Ins. Comm’rs (1999), at 841.

²⁹ *See* 29 U.S.C. § 1144(b)(2)(B); *Metro. Life Ins. Co. v. Mass.*, 471 U.S. 724, 747 (1985).

directed at the insurance industry and [] regulates insurance practices.”³⁰ This means that state laws regulating stop-loss insurance are not preempted by ERISA, and states exercise the authority to regulate stop-loss insurance.³¹

The NAIC, with membership consisting of all the state regulators, recognized this authority and adopted the Stop Loss Insurance Model Act³² with the “inten[t] to prevent insurers selling stop loss insurance from circumventing state health insurance requirements protecting employers and consumers....”³³ And many states have adopted either the model or various other requirements impacting stop-loss insurance.³⁴ Further, the NAIC adopted the Prevention of Illegal Multiple Employer

³⁰ NAIC Edstrom Brief, *supra* note 5, at 6 (citing *Kentucky Ass’n of Health Plans v. Miller*, 528 U.S. 329, 334 (2003)).

³¹ See NAIC Edstrom Brief, *supra* note 5, at 7; TERRY HUMO, EMPLOYER’S GUIDE TO SELF-INSURING HEALTH BENEFITS, ¶ 743 (2007).

³² 1 Nat. Ass’n of Ins. Comm’rs’ Model Laws, Regulations and Guidelines, 92-1 to 92-2 (1995).

³³ NAIC Edstrom Brief, *supra* note 5, at 7.

³⁴ See ALASKA STAT. § 21.42.145 (2002); ARK. CODE ANN. § 23-62-111 (2009); CAL. INS. CODE §§ 10752 to 10752.8; COLO. REV. STAT. § 10-16-119 (2013); CONN. GEN. STAT. § 38a-8b (2004); DEL. CODE ANN. tit. 18, § 7218 (2011); D.C. CODE §§ 31-3821 to 31-3822 (2015); FLA. STAT. § 627.66997 (2015); LA. REV. STAT. ANN. § 22:883 (2011); 24-A ME. REV. STAT. § 707(1)(C-1); MD. CODE ANN. INS. § 15-129 (2008); MINN. STAT. §§ 60A.235 to 60A.236 (2009); NEB. REV. STAT. § 44-7609 (2002); N.H. REV. STAT. ANN. §§ 415-H:1 to 415-H:5 (2006); N.J. STAT. ANN. § 17B:27A-17 (1997); OHIO REV. CODE ANN. § 1739.12 (2015); OKLA. STAT. tit. 36, § 7401 (2016); OR. REV. STAT. § 742.065 (1995); 31 PA. CONS. STAT. §§ 89.471 to 89.474 (1992); R.I. GEN. LAWS §§ 27-8.2-1 to 27-8.2-5 (2013); S.D. CODIFIED LAWS §§ 58-18B-35 & 58-33-106 (2007); UTAH CODE ANN. §§ 31A-43-101 to 31A-43-304 (2013); WASH. REV. CODE ANN. § 48.21.015 (1992); KAN. ADMIN. REGS. 40-1-49 (2002); 02-031 CODE ME. RULES ch. 135; NEV. ADMIN. CODE § 689B.350 (2001);

Welfare Arrangements (MEWAs) and Other Illegal Health Insurers Model Regulation, which states that “stop loss policy coverage...is insurance.”³⁵

If stop-loss products were not insurance, then the states arguably would not have authority to regulate stop-loss products. This is troubling because of the potential for an increase in adverse selection, insufficient regulatory oversight, and priority for the insured during liquidation. The first concern if states did not regulate stop-loss products is that adverse selection would occur more frequently. Many ACA requirements do not apply to self-funded plans, creating different underwriting standards between fully-insured and self-funded plans.³⁶ This can create adverse selection—where a person “with a higher than average probability of loss seeks greater insurance coverage than those with less risk.”³⁷ Regulating stop-loss

N.D. ADMIN. CODE 45-06-14-13 (2017); UTAH ADMIN CODE r. 590-268 (2014); 4-5 VT. CODE R. § 15 (2018); Alaska Bulletin 2006-4 (2006); Ark. Bulletins 4-2007 & 6-2008 (2006/2008); Iowa Opinion No. 90-10-2 (1990); Kan. Bulletins 1993-12, 1993-12 (Addendum), & 1997-7 (1993/1997); N.J. Bulletin 2011-20 (2011); Okla. Bulletin LH 2013-03 (2013); Tenn. Bulletin 7-1-94 (1994).

³⁵ 2 Nat. Ass’n of Ins. Comm’rs’ Model Laws, Regulations and Guidelines, 220-1 to 220-18, at § 4(D)(1) (2007). *See also* Model Bulletin, REGULATORY ALERT TO STOP LOSS CARRIERS AND THIRD PARTY ADMINISTRATORS, 2 Proc. of the Nat’l Ass’n of Ins. Comm’rs 232, 234 (2003) (“Stop loss coverage is insurance....”).

³⁶ NAIC White Paper, *supra* note 7, at 1.

³⁷ Glossary of Insurance Terms, NAIC, https://content.naic.org/consumer_glossary#:~:text=Adverse%20Selection%20%2D%20the%20social%20phenomenon,than%20those%20with%20less%20risk. (last visited Nov. 10, 2022). *See* NAIC White Paper, *supra* note 7, at 1.

insurance is one way to mitigate the adverse selection that occurs with self-funded plans.³⁸

The second concern is insufficient regulatory oversight. “The [Department of Labor] does not conduct any prior review of self-funded health plans for compliance before they commence operation.”³⁹ The lack of review of self-funded health plans means that employers can avoid appropriate underwriting. However, there is currently, and should continue to be, state regulatory oversight of stop-loss insurance. That means stop-loss insurance is subject to underwriting, which means the appropriate factors for rates will be examined in setting the stop-loss premium.⁴⁰ While the regulation of stop-loss insurance does not regulate self-funded plans,⁴¹ it does create some regulatory protection for the plans and employers that choose to purchase stop-loss insurance. State regulation of stop-loss insurance should continue so that appropriate underwriting occurs.

³⁸ See NAIC White Paper, *supra* note 7, at 1.

³⁹ *Id.* at 4.

⁴⁰ See *id.*

⁴¹ See *American Medical Sec., Inc. v. Bartlett*, 111F.3d 358, 361 (4th Cir. 1997) (“Accordingly, although plans that provide benefits in the form of insurance may be indirectly regulated through regulation of [stop-loss] insurance, []plans that are self-funded or self-insured may not themselves be regulated as insurance companies even if the self-funded or self-insured plan purchases stop-loss insurance to cover losses or benefits payments beyond a specified level.”). See generally *Metro. Life Ins. Co.*, *supra* note 29 (distinguishing direct and indirect regulation).

The third concern is the need for “continued priority of stop loss insurance policyholders in insurance company liquidations and guarantee fund coverage.”⁴² Currently, stop-loss insurance is covered by most state guarantee funds.⁴³ But, if courts were to consider stop-loss policies to be something other than insurance, guarantee fund protection could be lost.

CONCLUSION

The NAIC said it best: “The NAIC reflects a consensus among its member states that stop loss coverage is insurance....”⁴⁴ Given the District Court’s ruling in this case appears to be based, in part, on the erroneous conclusion that self-funded plans do not purchase insurance from the Blues, this Court should consider the impact of the District Court’s decision and address it in this Court’s decision as well as any impact to the parties in this case.

Respectfully submitted,

/s/ Kim Hunter

KIM HUNTER

General Counsel

Oklahoma Insurance Department

400 N.E. 50th Street

Oklahoma City, OK 73105

(405) 521-2746

kim.hunter@oid.ok.gov

⁴² NAIC Edstrom Brief, *supra* note 5, at 4.

⁴³ *See id.* at 12.

⁴⁴ *Id.* at 17.

Counsel for *Amici Curiae*

Of Counsel:

TERESA L. GREEN
Senior Counsel
Oklahoma Insurance Department
400 N.E. 50th Street
Oklahoma City, OK 73105
(405) 521-2746
teresa.green@oid.ok.gov

BOOTH RAND
General Counsel
Arkansas Insurance Department
One Commerce Way
Little Rock, AR 72202
(501) 371-2820
booth.rand@arkansas.gov

ROB BONTA (SBN 202668)
Attorney General of California
TAMAR PACHTER (SBN 146083)
Senior Assistant Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Telephone: (415) 510-3840
Fax: (415) 703-1234
tamar.pachter@doj.ca.gov

Attorneys for Ricardo Lara, Insurance Commissioner of the State of California

GREGG CONLEY
Executive Counsel
Georgia Office of Insurance and Safety Fire Commissioner
2 Martin Luther King, Jr., Drive
West Tower, Suite 702

Atlanta, GA 30334(404) 656-2070
gconley@oci.ga.gov

Counsel to the Director of the
Idaho Department of Insurance
KARL T. KLEIN

Deputy Attorney General
700 W. State St., 3rd Floor
PO Box 83720
Boise, Idaho 83720-0043
(208) 334-4204

karl.klein@doi.idaho.gov

Attorneys for Dean L. Cameron, Director of the Idaho Department of
Insurance

ROBERT ALAN WAKE
General Counsel
Maine Bureau of Insurance
34 State House Station
Augusta ME 04333-0034
robert.a.wake@maine.gov

ALEXIA EMMERMANN
Chief Insurance Counsel
Nevada Division of Insurance
1818 East College Parkway, Suite 103
Carson City, NV 89706
775-687-0712
aemmermann@doi.nv.gov

SHEILA GRACE
General Counsel
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101
(802) 828-3422
sheila.grace@vermont.gov

Counsel to the Washington State Insurance Commissioner

Marta U. DeLeon

Assistant Attorney General

1125 Washington Street SE

PO Box 40100

Olympia, WA 98504-0100

(360) 725-7171

RICHARD WICKA

Chief Legal Counsel

Wisconsin Office of the Commissioner of Insurance

125 S. Webster St.

Madison, WI 53703

(608) 261-6018

richard.wicka@wisconsin.gov

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of FEDERAL
RULE OF APPELLATE PROCEDURE 32(g). This brief contains 3476 words.

/s/ Kim Hunter

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I electronically filed the forgoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Participates in the case who are registered CM/ECF users will be served by the appellant CM/ECF system.

/s/ Kim Hunter